MISSISSIPPI CODE 1972
Annotated

Criminal Procedure

(§ 99-20-1 to
§ 99-49-1)

Title 99

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MISSISSIPPI CODE

1972

ANNOTATED

**ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE**

VOLUME TWENTY-TWO A

CRIMINAL PROCEDURE

§§ 99-20-1 to 99-49-1

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2020 REGULAR
LEGISLATIVE SESSION

LexisNexis®

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2020 Replacement Volume 22A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2000 Replacement Volume 21A, the 2007 Replacement Volume 21A, and the 2015 Replacement Volume 21A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2020 Regular Legislative Session.

This volume contains the text of Chapters 20 through 49 of Title 99 of the Mississippi Code of 1972 Annotated, as amended through the 2020 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, CO 80921.

September 2020 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

- — Advance Code Service
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- — Analyses
- — Code Status
- — Comparable Legislation from other States
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects.*

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 20.

COMMUNITY SERVICE RESTITUTION

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§ 99-20-1. Short title; purpose.

This chapter shall be known as the Mississippi Community Service Restitution Act. The purpose of this chapter is to provide an alternative method of punishment in cases in which the defendant would have otherwise been sentenced to a term of imprisonment.

HISTORY: Laws, 1983, ch. 447, § 1; reenacted, Laws, 1987, ch. 367, § 1, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victim generally, see §§ 99-37-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

A court may authorize participants in a Community Service, Restitution and Work Program to perform work service for qualified nonprofit charitable organizations as defined by Section 501 (c)(3) of the Internal Revenue Code. Weathers, Dec. 27, 2005, A.G. Op. 05-0549.

§ 99-20-3. Participation in community service restitution program.

Any defendant who qualifies for participation as set out in this chapter, shall be entitled to participate in a community service restitution program. Any convicted defendant who, having been sentenced prior to July 1, 1983, and who qualifies for participation in the program herein established, may petition the circuit court of the county of his conviction to be sentenced under the provisions of this chapter.

HISTORY: Laws, 1983, ch. 447, § 2; reenacted, Laws, 1987, ch. 367, § 2, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

RESEARCH REFERENCES

ALR.

Propriety, under 18 USCS § 3651, of district court's requiring contribution of money or services to charity or to community service as condition of suspending sentence and granting probation. 66 A.L.R. Fed. 825.

§ 99-20-5. Qualifications for participation in program.

In order to qualify for participation in a community service restitution program, the defendant must: (a) be a first offender, (b) be convicted of a nonviolent offense that would constitute a felony and (c) not have drug, alcohol or emotional problems so serious that he or she appears unlikely to be able to meet the obligations of the community service sentence.

HISTORY: Laws, 1983, ch. 447, § 3; reenacted, Laws, 1987, ch. 367, § 3; Laws, 1999, ch. 382, § 1, eff from and after July 1, 1999.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Duty of department of corrections to notify both district and defense attorneys of persons eligible for participation in community restitution program, see § 99-20-9.

Restitution to victims generally, see §§ 99-37-1 et seq.

RESEARCH REFERENCES

ALR.

Propriety, under 18 USCS § 3651, of district court's requiring contribution of money or services to charity or to community service as condition of suspending sentence and granting probation. 66 A.L.R. Fed. 825.

§ 99-20-7. Determining persons eligible for participation; review of district attorney's files.

Department of Corrections personnel shall review the incoming files in the office of district attorney in the circuit court district in which they are operating, to determine which, if any, of the persons charged are eligible for participation in the community service restitution program.

HISTORY: Laws, 1983, ch. 447, § 4; reenacted, Laws, 1987, ch. 367, § 4, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — General powers and duties of department of corrections, see § 47-5-10.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

§ 99-20-9. Notification of eligible persons; request for sentence to program; recommendations of victim.

When a case appears to meet the eligibility criteria established in Section 99-20-5, the Department of Corrections representative shall notify the district attorney of that district and the defense attorney.

The Department of Corrections representative, the district attorney and the defense attorney shall request the court to sentence the defendant to the community service restitution program. The Department of Corrections representative shall present to the court its basis for requesting the community service sentence. In addition, the victim, if any, of the crime for which the defendant is charged shall be asked to comment in writing as to whether or not the defendant shall be allowed to enter the program. The court shall not be bound by such recommendations.

HISTORY: Laws, 1983, ch. 447, § 5; reenacted, Laws, 1987, ch. 367, § 5, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — General powers and duties of department of corrections, see § 47-5-10.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

JUDICIAL DECISIONS

1. In general.

As noted in this section, the court is not bound by the recommendations of a Department of Corrections representative. Johnson v. State, 461 So. 2d 1288, 1984 Miss. LEXIS 2067 (Miss. 1984).

§ 99-20-11. Agreement to and acceptance of sentence by defendant; conditional discharge.

If a determination is made to use the community service sentence, the defendant must agree to and accept the determination.

Any defendant who is sentenced to the community service restitution program shall receive a conditional discharge from the presiding court and shall be sentenced to perform a certain number of hours of unpaid community service, in the sentencing court's discretion.

If a determination is made to use the community service sentence, the defendant must agree to and accept the determination.

Any defendant who is sentenced to the community service restitution program shall receive a conditional discharge from the presiding court and

shall be sentenced to perform a certain number of hours of unpaid community service, in the sentencing court's discretion.

HISTORY: Laws, 1983, ch. 447, § 6; reenacted, Laws, 1987, ch. 367, § 6, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

RESEARCH REFERENCES

ALR.

Propriety, under 18 USCS § 3651, of district court's requiring contribution of money or services to charity or to community service as condition of suspending sentence and granting probation. 66 A.L.R. Fed. 825.

§ 99-20-13. Participant informed of possible criminal sentence; consequences of failure to perform community service sentence.

Upon sentencing to the community service restitution program, the judge shall instruct the defendant as to what the sentence would have been had he or she not been placed in the community service restitution program, and shall inform the defendant as to consequences of failure to perform the community service sentence.

HISTORY: Laws, 1983, ch. 447, § 7; reenacted, Laws, 1987, ch. 367, § 7, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

§ 99-20-15. Written agreement between program participant and department of corrections.

If the court imposes the community service sentence, a written agreement shall be immediately executed by the defendant and the Department of Corrections representative. The agreement shall contain such provisions and conditions as the Department of Corrections and the court shall deem just and appropriate.

HISTORY: Laws, 1983, ch. 447, § 8; reenacted, Laws, 1987, ch. 367, § 8, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — General powers and duties of department of corrections, see § 47-5-10.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

§ 99-20-17. Failure to complete sentence; consequences.

Upon failure to complete the community service sentence, the case shall be restored to the court calendar for resentencing and a warrant for the arrest of the defendant shall immediately be issued.

HISTORY: Laws, 1983, ch. 447, § 9; reenacted, Laws, 1987, ch. 367, § 9, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

§ 99-20-19. Availability of program.

This alternative method of punishment shall be available only in circuit court districts where the Department of Corrections Commissioner certifies that such a program exists, can be enforced and that space is available in such program.

HISTORY: Laws, 1983, ch. 447, § 10; reenacted, Laws, 1987, ch. 367, § 10, eff from and after July 1, 1987.

Editor's Notes — Laws of 1983, ch. 447, § 11, provided that this section would stand repealed from and after July 1, 1987. Subsequently, Section 11, ch. 367, Laws of 1987, reenacted and amended Section 11, ch. 447, Laws of 1983, by removing the provision for repeal.

Cross References — General powers and duties of department of corrections, see § 47-5-10.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Restitution to victims generally, see §§ 99-37-1 et seq.

CHAPTER 21.

FUGITIVES FROM OTHER STATES

Sec.

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99-21-5.	Bonds to be filed with circuit clerk.
99-21-7.	Committing officer to notify governor.
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§ 99-21-1. Warrant for arrest of fugitives.

Any conservator of the peace, upon complaint on oath made before him, or on other satisfactory evidence, that any person within this state has committed treason, felony, or other crime in some other state or territory, and has fled from justice may issue a warrant for the arrest of such person as if the offense had been committed in this state.

HISTORY: Codes, 1880, § 3120; 1892, § 1470; 1906, § 1542; Hemingway's 1917, § 1304; 1930, § 1330; 1942, § 2577.

Cross References — Duty of governor to order arrest and delivery of fugitives from justice in other states, see § 7-1-25.

Expenses of returning felon, see § 25-7-73.

Aiding and abetting the escape of prisoners, see §§ 97-9-27 et seq.

Arrest of escaped or rescued offender, see § 99-3-15.

Powers and duties of conservators of peace generally, see §§ 99-15-1 through 99-15-11.

JUDICIAL DECISIONS

1. In general.

Filing of extradition proceedings and granting of extradition by asylum state constitutes prima facie case on behalf of state that it is entitled to extradition; controversy over specific date of alleged crime is question to be litigated in judiciary of demanding state. Allen v. State, 515 So. 2d 890, 1987 Miss. LEXIS 2873 (Miss. 1987).

Introduction of Governor's extradition warrant creates presumption that all requirements for extradition have been met. Allen v. State, 515 So. 2d 890, 1987 Miss. LEXIS 2873 (Miss. 1987).

Executive agreement between Governor of Mississippi and Governor of Minnesota providing for the release of incarcerated prisoner from Mississippi to agents of Minnesota so that prisoner could stand trial in Minnesota on murder charges and thereafter be returned to Mississippi did not violate prisoner's constitutional rights, as Mississippi law does not provide fugitive with right to hearing prior to extradition and all other requirements for extradition were complied with. Good v. Allain, 646 F. Supp. 1029, 1986 U.S. Dist. LEXIS 18402 (S.D. Miss. 1986), aff'd in part, modified, 823 F.2d 64, 1987 U.S. App. LEXIS 10287 (5th Cir. Miss. 1987).

In a habeas corpus challenge to the Mississippi governor's extradition of appellee to Missouri, despite a dispute regarding whether an accusatory affidavit was presented to the governor, the Missouri governor's warrant for appellee's arrest established prima facie basis for extradition and the appellee failed to prove its insufficiency. Taylor v. Garrison, 329 So. 2d 506, 1976 Miss. LEXIS 1824 (Miss. 1976).

Affidavit charging petitioner with being fugitive from justice held in due and proper form. Wall v. Quin, 148 Miss. 335, 114 So. 744, 1927 Miss. LEXIS 74 (Miss. 1927).

Warrant for arrest of petitioner as fugitive from justice, commanding that he be forthwith arrested and brought before justice, made warrant returnable instanter, and no other return day was required. Wall v. Quin, 148 Miss. 335, 114 So. 744, 1927 Miss. LEXIS 74 (Miss. 1927).

RESEARCH REFERENCES

ALR.

Extradition of juveniles. 73 A.L.R.3d 700.

Necessity that demanding state show probable cause to arrest fugitive in extradition proceedings. 90 A.L.R.3d 1085.

State statutes or regulations expressly governing disclosure of fact that person has tested positive for human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS). 12 A.L.R.5th 149.

Arrest and transportation of fugitive without extradition proceedings as violation of civil rights actionable under 42 USCS § 1983. 45 A.L.R. Fed. 872.

Am. Jur.

5 Am. Jur. 2d, Arrest § 39.

8 Am. Jur. Legal Forms 2d, Extradition §§ 107:10 et seq. (requisition by demanding state); §§ 107:31 et seq. (arrest and surrender by asylum state).

CJS.

6A C.J.S., Arrest §§ 9, 14.

Lawyers' Edition.

Interstate extradition: Supreme Court's construction of Extradition Act (18 USCS § 3182, and similar predecessor provisions) and of extradition clause (Art IV, § 2, cl 2) of Federal Constitution. 96 L. Ed. 2d 750.

§ 99-21-3. Bail.

If it shall appear to the conservator of the peace before whom the fugitive shall be brought, that there is reasonable cause to believe that the complaint is true, he shall, if the prisoner would be entitled to bail if the offense had been committed in this state, require him to furnish bail to appear before the circuit court of the county at its next term, and from day to day and term to term until discharged by law. If such person do not give bail with sufficient sureties as required, he shall be committed to jail until he give such bail, or until he be discharged as hereinafter provided. If such person would not be bailable if the offense charged had been committed in this state, he shall be committed to jail to remain until discharged as provided by law.

HISTORY: Codes, 1880, § 3131; 1892, § 1471; 1906, § 1543; Hemingway's 1917, § 1305; 1930, § 1331; 1942, § 2578.

Cross References — Powers and duties of conservators of peace generally, see §§ 99-15-1 through 99-15-11.

RESEARCH REFERENCES

Lawyers' Edition.

Interstate extradition: Supreme Court's construction of Extradition Act (18 USCS § 3182, and similar predecessor provisions) and of extradition clause (Art IV, § 2, cl 2) of Federal Constitution. 96 L. Ed. 2d 750.

§ 99-21-5. Bonds to be filed with circuit clerk.

Any bond or recognizance taken shall be delivered at once to the clerk of the circuit court before which the party is bound to appear, and, in case of forfeiture, like proceedings shall be had thereon as in other cases.

HISTORY: Codes, 1880, § 3122; 1892, § 1472; 1906, § 1544; Hemingway's 1917, § 1306; 1930, § 1332; 1942, § 2579.

Cross References — Circuit clerks generally, see §§ 9-7-121 et seq.

§ 99-21-7. Committing officer to notify governor.

The conservator of the peace bailing or committing such person shall immediately report the fact to the governor of this state.

HISTORY: Codes, 1880, § 3123; 1892, § 1473; 1906, § 1545; Hemingway's 1917, § 1307; 1930, § 1333; 1942, § 2580.

Cross References — Powers and duties of conservators of peace generally, see §§ 99-15-1 through 99-15-11.

§ 99-21-9. Appearance before circuit court.

If the person bound appear before the circuit court according to his obligation, he shall be discharged by the court, unless he be demanded by some person authorized by the governor of this state to demand him, or unless the court shall commit him if he were improperly admitted to bail, or shall require him to give a new bond or recognizance if his bail be insufficient, or shall order his bond or recognizance at first given to continue in force for a longer time; but any such person may at any time be taken into custody by any person authorized by the governor of this state, and such taking into custody shall be a discharge from any bail he may have given.

HISTORY: Codes, 1880, § 3124; 1892, § 1474; 1906, § 1546; Hemingway's 1917, § 1308; 1930, § 1334; 1942, § 2581.

Cross References — Inapplicability of Mississippi Rules of Evidence to proceedings for extradition or rendition, see Miss. R. Evid. 1101.

JUDICIAL DECISIONS

1. In general.

Executive agreement between Governor of Mississippi and Governor of Minnesota providing for the release of incarcerated prisoner from Mississippi to agents of Minnesota so that prisoner could stand trial in Minnesota on murder charges and thereafter be returned to Mississippi did not violate prisoner's constitutional rights, as Mississippi law does not provide fugitive with right to hearing prior to extradition and all other requirements for extradition were complied with. Good v. Allain, 646 F. Supp. 1029, 1986 U.S. Dist. LEXIS 18402 (S.D. Miss. 1986), aff'd in part, modified, 823 F.2d 64, 1987 U.S. App. LEXIS 10287 (5th Cir. Miss. 1987).

§ 99-21-11. Person causing arrest liable for costs; deposit or security may be required.

The person making complaint to procure the arrest of any person charged with crime in some other state or territory, shall be answerable for all the costs of the arrest and proceedings, and for the jail fees, if the person be committed to jail; and the conservator of the peace applied to may require such deposit of money, or other security for the payment of all costs, charges, and fees in such proceedings, as he thinks reasonable, and may refuse to issue a warrant or commit the person to jail, or do anything in such matter until compliance with the requirement.

HISTORY: Codes, 1880, § 3125; 1892, § 1475; 1906, § 1547; Hemingway's 1917, § 1309; 1930, § 1335; 1942, § 2582.

Cross References — Powers and duties of conservators of peace generally, see §§ 99-15-1 through 99-15-11.

CHAPTER 23.

PEACE BONDS

Sec.
99-23-1. Complaint; warrant of arrest; condition of bond.
99-23-3. Payment of costs.
99-23-5. Discharge or commitment of accused.
99-23-7. Appeal to circuit court and proceedings therein.
99-23-9. Costs in circuit court.
99-23-11. Judgment after failure to prosecute appeal.
99-23-13. Certain bonds to be delivered to justice court; proceeding for breach; delivery to circuit court on appeal.
99-23-15. Bonds over two hundred dollars returned to circuit clerk.
99-23-17. Grand jury to inquire and report on breach of bonds.
99-23-19. District attorney to institute proceedings to forfeit bonds.
99-23-21. Proceedings to collect forfeited bonds.
99-23-23. What constitutes breach of bond; proof.
99-23-25. Sureties may surrender their principal.
99-23-27. Person convicted of crime less than felony may be made to give peace bond.
99-23-29. Form of affidavit to obtain security to keep the peace.
99-23-31. Form of bond to keep the peace.

§ 99-23-1. Complaint; warrant of arrest; condition of bond.

Whenever complaint is made under oath by a credible person to a justice of the peace that any person has threatened to commit an offense against the person or property of another, and such justice is satisfied that there is good reason to fear the commission of such offense, he may issue a warrant to arrest and bring the person complained of before him or some other justice of the peace; and the justice of the peace before whom such person may be brought shall examine into the charge, and if there be just reason to apprehend that such person will commit the offense, he shall be required by the justice to enter into bond in such sum, with such sureties, and for such time not exceeding twelve months, as the justice may prescribe, conditioned to keep the peace toward the person against whom or whose property there is reason to fear the offense may be committed.

HISTORY: Codes, 1880, § 3126; 1892, § 1476; 1906, § 1548; Hemingway's 1917, § 1310; 1930, § 1336; 1942, § 2583.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Bail to keep the peace required of arrested person about to duel, see § 97-39-9.

Criminal jurisdiction of justice court judges, see § 99-33-1.

JUDICIAL DECISIONS

1. In general.

The state and not the party making the affidavit is the sole beneficiary of a bond to keep the peace. State use of Reed v.

Boutwell, 123 Miss. 666, 86 So. 454, 1920 Miss. LEXIS 67 (Miss. 1920).

The venue of a justice of the peace under this section [Code 1942, § 2583] is in the county where the threats or hostile actions occur. Ford v. State, 96 Miss. 85, 50 So. 497, 1909 Miss. LEXIS 21 (Miss. 1909).

OPINIONS OF THE ATTORNEY GENERAL

In line with Section 99-3-7(2), a constable is not required to provide the defendant with a copy of the arrest warrant; however, the constable should show the defendant the warrant as soon as practicable, if requested by the defendant. Shirley, Apr. 26, 2005, A.G. Op. 05-0094.

When a complaint is filed and the justice determines that there is good reason to fear the commission of an offense, the clerk would collect $25.00 for court costs pursuant to Section 25-7-25. The constable would be entitled to a $35.00 fee, but it would only be collected after the court has conducted a hearing and determined, consistent with fact, that grounds exist for the issuance of a warrant. Shirley, Apr. 26, 2005, A.G. Op. 05-0094.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 38 et seq.

CJS.

11 C.J.S., Breach of the Peace §§ 14 et seq.

§ 99-23-3. Payment of costs.

If, on examination, it shall not appear that there is just cause to fear that an offense will be committed by the party complained of, he shall be discharged, and the person who made the complaint shall be taxed with the costs, for which execution may be issued. But if it shall appear that the defendant had threatened to commit an offense, or had so acted as to justify the apprehensions of the person complaining that there was danger of the commission of an offense, the party complained of shall be taxed with the costs of the proceeding, although he may not be required to give bond; and, if he shall be required to furnish bond, he shall be taxed with all costs, for which execution may be issued.

HISTORY: Codes, 1880, § 3127; 1892, § 1477; 1906, § 1549; Hemingway's 1917, § 1311; 1930, § 1337; 1942, § 2584.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 47.

CJS.

11 C.J.S., Breach of the Peace §§ 20, 21.

§ 99-23-5. Discharge or commitment of accused.

If the bond, when required, be given, and the costs be paid, the person shall be discharged from custody, but otherwise he shall be committed to jail until he shall give such bond and pay the costs, or until the expiration of the time for which he was required to furnish security; and in such case the mittimus must state the cause of the commitment, the amount of bail, and the number of sureties required, the time for which the person is to be bound to keep the peace, and the amount of costs taxed against him. He may at any time procure his discharge by giving the required bond, approved by the sheriff of the county, and paying the costs and the jail fees accrued, if any.

HISTORY: Codes, 1880, § 3128; 1892, § 1478; 1906, § 1550; Hemingway's 1917, § 1312; 1930, § 1338; 1942, § 2585.

§ 99-23-7. Appeal to circuit court and proceedings therein.

Any person aggrieved by a requirement to give security to keep the peace may, at any time while such requirement is in force, appeal to the circuit court, on his application to the justice of the peace and giving bonds as required, with the further condition in the bond that the appellant shall pay all costs, in case it shall be adjudged against him in the circuit court; and thereupon all the papers in the case shall be returned by the justice of the peace to the office of the clerk of the circuit court, and said court shall examine the case anew, and either approve the bond the party gave or discharge him therefrom, or require him to enter a new one to keep the peace, in such sum and for such time not exceeding twelve months, as the court may prescribe, which judgment shall be enforced by committing the party to jail as in other cases of failure to give bail when required, from which he shall be delivered only by giving the required bail, and paying costs and jail fees. But such appeal shall not supersede the judgment requiring a bond to keep the peace, until such judgment shall be reversed by the circuit court.

HISTORY: Codes, 1880, § 3129; 1892, § 1479; 1906, § 1551; Hemingway's 1917, § 1313; 1930, § 1339; 1942, § 2586.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

1. In general.

On appeal the question of fact must be tried by the circuit judge. Ford v. State, 96 Miss. 85, 50 So. 497, 1909 Miss. LEXIS 21 (Miss. 1909).

One required under this section [Code 1942, § 2586] to give bond for good behavior may appeal to the circuit court. Jones v. State, 70 Miss. 398, 12 So. 710, 1892 Miss. LEXIS 135 (Miss. 1892).

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 46.

CJS.

11 C.J.S., Breach of the Peace § 22.

§ 99-23-9. Costs in circuit court.

The circuit court shall render such judgment for costs on the appeal as may be proper against the appellant and the sureties on his bond.

HISTORY: Codes, 1880, § 3130; 1892, § 1480; 1906, § 1552; Hemingway's 1917, § 1314; 1930, § 1340; 1942, § 2587.

§ 99-23-11. Judgment after failure to prosecute appeal.

If the appellant take an appeal and do not prosecute it, there shall be judgment on the bond for costs if any are due; and such bond shall stand in full force as security to keep the peace.

HISTORY: Codes, 1880, § 3131; 1892, § 1481; 1906, § 1553; Hemingway's 1917, § 1315; 1930, § 1341; 1942, § 2588.

§ 99-23-13. Certain bonds to be delivered to justice court; proceeding for breach; delivery to circuit court on appeal.

When the bond required shall not exceed One Thousand Dollars ($1,000.00), or after July 1, 1986, when such bond shall not exceed Five Hundred Dollars ($500.00), it shall be retained by the justice court and the proceeding upon its breach shall be instituted at the instance of the aggrieved party by the justice court and shall be, as nearly as may be, as provided for such case in the circuit court. Any such bond taken by the sheriff, and not exceeding the amount stated above, shall be delivered to the clerk of the justice court which required it. If the party giving bond takes an appeal to the circuit court, such bond shall be delivered, with the other papers in the case, to the clerk of the circuit court, as in other cases of appeal, although the amount of the bond shall not exceed the amount stated above, and such bond shall thereafter remain in said court, and for any breach thereof may be prosecuted in said court as if the amount of its penalty exceeded the amount stated above.

HISTORY: Codes, 1880, § 3135; 1892, § 1487; 1906, § 1559; Hemingway's 1917, § 1321; 1930, § 1347; 1942, § 2594; Laws, 1981, ch. 471, § 55; Laws, 1982, ch. 423, § 28; Laws, 1985, ch. 478, § 2, eff from and after July 1, 1985.

§ 99-23-15. Bonds over two hundred dollars returned to circuit clerk.

All bonds taken as provided in this chapter, and exceeding in amount two hundred dollars, shall be returned by the officer taking them to the office of the clerk of the circuit court of the county on or before the first day of the next term of said court, and shall be by such clerk carefully preserved in his office.

HISTORY: Codes, 1880, § 3132; 1892, § 1482; 1906, § 1554; Hemingway's 1917, § 1316; 1930, § 1342; 1942, § 2589.

Cross References — Circuit clerks generally, see §§ 9-7-121 et seq.

§ 99-23-17. Grand jury to inquire and report on breach of bonds.

It shall be the duty of the clerk of the circuit court, at each term of court, to deliver to the grand jury all peace bonds that have been filed with him or in his office within two (2) years then next past, which bonds shall be returned by the grand jury to said clerk before its final adjournment. It shall be the duty of the grand jury to inquire into whether or not there has been a breach of said bonds, and to notify the district attorney of any breaches. The grand jury shall examine the person at whose instance the bond was required, if he can be found and examined; and it may examine other witnesses. If it finds that there has been a breach of the bond, it shall furnish the district attorney a list of the witnesses by whom the facts can be established.

HISTORY: Codes, 1892, § 1483; 1906, § 1555; Hemingway's 1917, § 1317; 1930, § 1343; 1942, § 2590; Laws, 1983, ch. 499, § 28, eff from and after July 1, 1983.

Cross References — Circuit clerks generally, see §§ 9-7-121 et seq.
Duty of district attorney to institute proceedings to collect forfeited bonds, see § 99-23-19.
Proceedings to collect forfeited bonds, see § 99-23-21.
What constitutes breach of bond, see § 99-23-23.
Form of affidavit to obtain security to keep the peace, see § 99-23-29.
Form of peace bond, see § 99-23-31.

§ 99-23-19. District attorney to institute proceedings to forfeit bonds.

It shall be the duty of the district attorney whenever informed by the grand jury, or otherwise reliably, of the breach of any peace bond, to institute proceedings thereon as provided in § 99-23-21.

HISTORY: Codes, 1892, § 1484; 1906, § 1556; Hemingway's 1917, § 1318; 1930, § 1344; 1942, § 2591.

Cross References — Attendance of district attorney at deliberations of grand jury, see § 25-31-13.
Proceeding to collect forfeited bonds, see § 99-23-21.
What constitutes breach of bond, see § 99-23-23.

§ 99-23-21. Proceedings to collect forfeited bonds.

The mode of proceeding in the case of a breach of bond shall be by scire facias issued by the clerk of the court, on the order of the court or the district attorney, returnable to the court at its next term, requiring the obligors to show cause why the bond shall not be declared forfeited because of the breach of its condition, which shall be recited in the scire facias. Upon the return of the scire facias executed, or of two of such writs "not found" by the sheriff of the county, if sufficient showing be not made to the contrary, judgment may be rendered on such bonds; but the court may remit any part of the amount of such bond, or the judgment rendered thereon, as may be just and reasonable.

HISTORY: Codes, 1880, § 3133; 1892, § 1485; 1906, § 1557; Hemingway's 1917, § 1319; 1930, § 1345; 1942, § 2592.

Cross References — Circuit clerks generally, see §§ 9-7-121 et seq.
Duty of district attorney to institute proceeding to collect forfeited bonds, see § 99-23-19.
What constitutes breach of bond, see § 99-23-23.

§ 99-23-23. What constitutes breach of bond; proof.

Any offense committed on the person or property of another toward whom the party may have been bound to keep the peace, shall constitute a breach of such bond, which breach may be shown by the record of the conviction of the party of the offense, or by proof of the commission of the offense where conviction has not been had, on proceeding by scire facias, as above provided.

HISTORY: Codes, 1880, § 3134; 1892, § 1486; 1906, § 1558; Hemingway's 1917, § 1320; 1930, § 1346; 1942, § 2593.

Cross References — Duty of district attorney to institute proceedings to collect forfeited bonds, see § 99-23-19.1.
Proceedings to collect forfeited bonds, see § 99-23-21.
Form of affidavit to obtain security to keep the peace, see § 99-23-29.
Form of peace bond, see § 99-23-31.

RESEARCH REFERENCES

CJS.
11 C.J.S., Breach of the Peace, §§ 23, 24.

§ 99-23-25. Sureties may surrender their principal.

The sureties of any person bound to keep the peace, may, at any time, surrender their principal to the sheriff of the county in which the principal was bound, under the same rules governing such surrender in criminal cases; and the person surrendered may give a new bond, to be approved by the sheriff, in the same sum and with like sureties as the former, for the residue of the time for which he was bound to keep the peace, and thereupon he shall be discharged.

HISTORY: Codes, 1880, § 3136; 1892, § 1488; 1906, § 1560; Hemingway's 1917, § 1322; 1930, § 1348; 1942, § 2595.

Cross References — Surrender of principal by bail, see § 99-5-27.

§ 99-23-27. Person convicted of crime less than felony may be made to give peace bond.

Every court before which any person shall be convicted of an offense less than a felony may, in addition to the penalty prescribed by law, require the convict to enter into bond in a reasonable sum, with or without sureties, to keep the peace and to be of good behavior for any time not longer than two years, and may order him to stand committed until such bond be executed; and for any breach thereof it may be proceeded on by scire facias as in other cases.

HISTORY: Codes, 1880, § 3138; 1892, § 1489; 1906, § 1561; Hemingway's 1917, § 1323; 1930, § 1349; 1942, § 2596.

Cross References — Form of affidavit to obtain security to keep the peace, see § 99-23-29.

Form of peace bond, see § 99-23-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular circumstances.

1. In general.

After the final judgment has been imposed the court was in error in requiring an appellant to enter into a bond to keep peace in accordance with this section [Code 1942, § 2596]. Freeman v. State, 220 Miss. 777, 72 So. 2d 139, 1954 Miss. LEXIS 495 (Miss. 1954).

Where a person is convicted of an offense less than felony and is required to enter into a bond to keep peace and to be of good behavior this was no violation of the constitution in placing him in double jeopardy for the same offense. Arnold v. State, 213 Miss. 667, 57 So. 2d 484, 1952 Miss. LEXIS 408 (Miss. 1952).

This statute simply authorizes an additional penalty for which the defendant is convicted. City of Jackson v. Belew, 110 Miss. 243, 70 So. 346, 1915 Miss. LEXIS 31 (Miss. 1915).

An appeal from such judgment operates to supersede the same. City of Jackson v. Belew, 110 Miss. 243, 70 So. 346, 1915 Miss. LEXIS 31 (Miss. 1915).

Under this section [Code 1942, § 2596] the judgment of conviction should embrace the requirement to execute the peace bond as a part of said judgment. Buck v. State, 103 Miss. 276, 60 So. 321, 1912 Miss. LEXIS 170 (Miss. 1912).

2. Particular circumstances.

The trial judge is authorized in his sound discretion to make his own deduction from the evidence when he requires a good behavior bond, and where in the sentence he orders one who has been convicted of operating a motor vehicle while intoxicated to post the good behavior bond, it will not be set aside as arbitrary. Arnold v. State, 213 Miss. 667, 57 So. 2d 484, 1952 Miss. LEXIS 408 (Miss. 1952).

Statute respecting bonds to keep the peace for not longer than two years had no bearing on power to revoke suspension of sentence after two years. Bolton v. State, 166 Miss. 290, 146 So. 453, 1933 Miss. LEXIS 346 (Miss. 1933).

Peace bond of $2,500 required of one convicted of possessing liquor held excessive. McCluney v. State, 162 Miss. 333, 138 So. 356, 1931 Miss. LEXIS 118 (Miss. 1931).

Peace bond, without limitation of time, required of one convicted of possessing liquor, held erroneous. McCluney v. State, 162 Miss. 333, 138 So. 356, 1931 Miss. LEXIS 118 (Miss. 1931).

A peace bond can be required by order of the court of a defendant on conviction of illegal possession of liquor. Cox v. State, 146 Miss. 685, 112 So. 479, 1927 Miss. LEXIS 252 (Miss. 1927).

A defendant convicted of possessing intoxicating liquors may be required to give a peace bond, but one in reasonable amount. In this case $2,500.00 peace bond declared excessive. Jones v. State, 146 Miss. 819, 112 So. 170, 1927 Miss. LEXIS 245 (Miss. 1927).

A case in which a defendant was required to give a fifteen hundred dollar bond to keep the peace held not to be cruel or excessive fine. Vigouroux v. State, 136 Miss. 505, 101 So. 576, 1924 Miss. LEXIS 160 (Miss. 1924).

§ 99-23-29. Form of affidavit to obtain security to keep the peace.

"State of Mississippi, ________ County.

"Before me, Andrew Sims, a justice of the peace of said county, Sallie Anderson complains on oath that Junius Brown has threatened to beat her (or to tear down her fence, or whatever may be the threatened offense), and she fears he will do as he has threatened, or some other injury to her person or property, and she prays that he may be required to give security to keep the peace toward her.

"Sallie Anderson.

"Sworn to and subscribed before me, the 30th day of November, 1906.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1499; 1906, § 1571; Hemingway's 1917, § 1333; 1930, § 1359; 1942, § 2606.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — What constitutes breach of bond, see § 99-23-23.

Form of bond to keep the peace, see § 99-23-31.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 44.

CJS.

11 C.J.S., Breach of the Peace § 16.

§ 99-23-31. Form of bond to keep the peace.

"We, Junius Brown, principal, and Joseph Thorn and Daniel Alderson, his sureties, agree to pay to the State of Mississippi five hundred dollars, unless the said Junius Brown, shall for six months, keep the peace toward the person and property of Sallie Anderson.

"Witness our signatures, the 1st day of December, 1906.

"Junius Brown,
"Joseph Thorn,
"Daniel Alderson.

"Approved by me, 1st day of December, 1906.

"Andrew Sims, J.P. ________ County."

HISTORY: Codes, 1892, § 1500; 1906, § 1572; Hemingway's 1917, § 1334; 1930, § 1360; 1942, § 2607.

Cross References — What constitutes breach of bond, see § 99-23-23.
Form of affidavit to obtain security to keep the peace, see § 99-23-29.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct § 41.

CHAPTER 25.

FORMS

Sec.
99-25-1. Forms provided.
99-25-3. Affidavit charging crime of murder.
99-25-5. Warrant.
99-25-7. Mittimus where bail is denied.
99-25-9. Mittimus where bail is allowed and not given.
99-25-11. Entry on docket.
99-25-13. Proceedings certified to circuit court.
99-25-15. Affidavit to obtain search warrant.
99-25-17. Search warrant and capias.

§ 99-25-1. Forms provided.

Proceedings may be in accordance with the forms set forth in this chapter, where applicable.

HISTORY: Codes, 1892, § 1490; 1906, § 1562; Hemingway's 1917, § 1324; 1930, § 1350; 1942, § 2597.

Cross References — Naming state as respondent in proceedings under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-9.

§ 99-25-3. Affidavit charging crime of murder.

"The State of Mississippi, ________ County.

"Before me, Andrew Sims, a justice of the peace of the said county, David Owens makes oath that John Jones, on or about the 8th day of July, A.D. 1906, in said county, did feloniously, wilfully, and of malice aforethought, kill and murder Timothy Anderson, against the peace and dignity of the State of Mississippi.

"David Owens.

"Sworn to and subscribed before me, the 9th day of July, 1906. "Andrew Sims,

J.P."

HISTORY: Codes, 1892, § 1491; 1906, § 1563; Hemingway's 1917, § 1325; 1930, § 1351; 1942, § 2598.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.
Cross References — Murder, capital murder defined, see § 97-3-19.

§ 99-25-5. Warrant.

"The State of Mississippi.

"To any lawful officer of ________ County:

"We command you forthwith to take the body of John Jones, charged with murder in the County of ________, and bring him before the undersigned, a justice of the peace of said county, for examination on said charge.

"Witness my hand, the 9th day of July, 1906.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1492; 1906, § 1564; Hemingway's 1917, § 1326; 1930, § 1352; 1942, § 2599.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

1. In general.

A complaint by a sheriff was insufficient to support a finding of a magistrate that there was probable cause for issuance of an arrest warrant, where the complaint stated no more than the sheriff's conclusion that the named individuals were the persons who committed the offense, and where, although the basis for the sheriff's conclusion was a tip from an informant, neither that fact nor any other operative fact was contained in the complaint. Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 91 S. Ct. 1031, 28 L. Ed. 2d 306, 1971 U.S. LEXIS 65 (U.S. 1971).

§ 99-25-7. Mittimus where bail is denied.

"The State of Mississippi.

"To the sheriff of ________ County:

"We command you to receive and safely keep in jail John Jones, without bail, to answer to the State of Mississippi on a charge of murder, committed in said county, and not bailable according to the judgment of the undersigned, a justice of the peace of said county, before whom said charge has been examined.

"Witness my hand, the 10th day of July, 1906.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1493; 1906, § 1565; Hemingway's 1917, § 1327; 1930, § 1353; 1942, § 2600.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-25-9. Mittimus where bail is allowed and not given.

"The State of Mississippi.

"To the sheriff of ________ County:

"We command you to receive and safely keep in jail John Jones, to answer the State of Mississippi on a charge of manslaughter, committed in said county, as appears by the judgment of the undersigned, a justice of the peace of said county, on an examination thereof, unless the said John Jones shall furnish bail, with sufficient sureties, to be approved by you, in the sum of two thousand five hundred dollars, for his appearance before the circuit court of said county to answer said charge, at its next term and thereafter, until discharged by law, whereupon you shall release him.

"Witness my hand, the 10th day of July, 1906.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1494; 1906, § 1566; Hemingway's 1917, § 1328; 1930, § 1354; 1942, § 2601.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-25-11. Entry on docket.

"The State of Mississippi
v. Charged with murder.
John Jones.

"Affidavit made 9th July, 1906, and warrant issued for accused same day. July 10th, 1906, accused brought before me and examination of said charge was had, and the accused was required to furnish bail, with sureties, in the sum of two thousand five hundred dollars, for his appearance before the circuit court to answer the charge of manslaughter, and he gave bail as required, with Cyrus Drane and Virgil Field as his sureties, and was thereupon discharged (or, failing to give bail as required, he was committed to jail, or he was committed to jail to be held without bail, as the case may be)."

HISTORY: Codes, 1892, § 1495; 1906, § 1567; Hemingway's 1917, § 1329; 1930, § 1355; 1942, § 2602.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-25-13. Proceedings certified to circuit court.

"The State of Mississippi
v. Charged with murder.
John Jones.

"The said accused having been brought before the undersigned, a justice of the peace of ________ County, for examination of said charge, and I, the undersigned justice of the peace, having heard the testimony of the following witnesses touching said charge, viz.: ________ found the said accused should be held to await the action of the grand jury.

"And said John Jones was committed to jail without bail (or was required to give bail, with sureties, in the sum of two thousand five hundred dollars for his appearance before the circuit court of said county to answer the charge of manslaughter, and, having given bail as required, was discharged accordingly).

"State of Mississippi, ________ County.

"I, Andrew Sims, a justice of the peace of said county, certify that the foregoing pages correctly represent the proceedings had and taken before me, on the ________ day of July, 1906, in the matter therein stated.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1496; 1906, § 1568; Hemingway's 1917, § 1330; 1930, § 1356; 1942, § 2603.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-25-15. Affidavit to obtain search warrant.

"State of Mississippi, ________ County.

"Before me, Andrew Sims, a justice of the peace of said county, Edward Nolly makes oath that, on or about the ________ day of ________ 1906, in the said county, a box of candles and a case of brogan shoes, the property of affiant, of the value of one hundred dollars were feloniously stolen, taken, or carried away; and affiant suspects Samuel Miller as the person guilty of said crime, and has reason to believe and does believe that the said stolen articles, or some of them, are now concealed in or about the dwelling house, or outhouses connected therewith, of the said Samuel Miller, in said county; and affiant prays a search warrant to search said premises, and seize the said goods if found, and also the body of said Samuel Miller, to be disposed of according to law.

"Edward Nolly.

"Sworn to and subscribed before me, the ________ day of ________ , 1906.

"Andrew Sims, J.P."

HISTORY: Codes, 1892, § 1497; 1906, § 1569; Hemingway's 1917, § 1331; 1930, § 1357; 1942, § 2604.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Grand larceny, see § 97-17-41.

Petit larceny, see § 97-17-43.

Liability for costs of search warrant in certain criminal prosecutions, see § 99-1-11.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of affidavit.
3. —Statement of belief.
4. Defective affidavit.

1. In general.

There was sufficient information that would justify issuance of a search warrant against defendant; defendant's girlfriend had been the judge's ex-girlfriend, but the trial judge testified that he was the only judge who could issue the warrant, and a detached and neutral judge found sufficient foundation to have justified issuance of the warrant. Cole v. State, 915 So. 2d 481, 2005 Miss. App. LEXIS 613 (Miss. Ct. App. 2005).

The highway patrol had no authority to deliver a stolen pickup truck, which had an altered vehicle identification number and had been seized from an innocent purchaser pursuant to a valid search warrant, to an insurance company, which had paid the owner the full value of the truck under a theft loss insurance policy and was therefore the lawful owner of the vehicle, absent court approval with no advance notice to the innocent purchaser of its intent to do so and without giving him an opportunity contest the matter in a court of competent jurisdiction; the appropriate procedure would have been for the highway patrol, once the truck served no further purpose in the criminal investigation or prosecution, to make a motion in the justice court for authority to release it to the insurance company, and to give the innocent purchaser and the insurance company reasonable notice of such application and an opportunity to be heard; however, the circuit court erred in directing return of the pickup truck to the innocent purchaser without making the insurance company a party to the hearing or giving it any notice of the proceeding, as this was a blatant violation of the insurance company's right to due process. Newman v. Stuart, 597 So. 2d 609, 1992 Miss. LEXIS 121 (Miss. 1992).

Property seized under a search warrant is an exercise of the police power of the State, and the State has the authority to keep and maintain control of the property until it is no longer needed in a criminal prosecution or investigation; while the property is thus seized, it is under the lawful custody of the magistrate who issued the warrant or the court having jurisdiction of the criminal prosecution in which the property is material evidence; when seized property is no longer needed for criminal prosecution by the State, it should be restored to its lawful owner, and if there is no conflict as to ownership, the court having custody of the property ordinarily directs its release to the owner; although stolen property may have been seized by an invalid search warrant, this does not entitle a thief or the person claiming title through the thief to its return; if there is a dispute as to ownership of allegedly stolen property, it is resolved through a civil proceeding in which the State has no interest, and the property is held until the question of ownership has been determined by a civil action in a court of competent jurisdiction. Newman v. Stuart, 597 So. 2d 609, 1992 Miss. LEXIS 121 (Miss. 1992).

Application for search warrant, whether under Code 1942, § 2614, or this section [Code 1942, § 2604], is not also an application for appointment of special officer to serve it under Code 1942, § 1877, since sections dealing with search warrants make no provision for prayer for appointment of special officer to serve same, all such process being directed to be addressed to lawful officer. Claunch v. State, 208 Miss. 767, 45 So. 2d 581, 1950 Miss. LEXIS 295 (Miss. 1950).

2. Sufficiency of affidavit.

An affidavit for a search warrant was not fatally defective merely because the attached page containing a description of the residence to be searched was not signed by the affiants, where other pages of the affidavit were signed, and the narcotics agent who was the author of the warrant and application swore that the description was not substituted. Williams v. State, 583 So. 2d 620, 1991 Miss. LEXIS 396 (Miss. 1991).

Detailed underlying facts supporting the affidavits for 2 search warrants furnished the judge with probable cause for issuing the search warrants, even though the criminal investigator who executed the affidavits erred in some of the statements set forth in the underlying facts, where the investigator was cross-examined at the suppression hearing at great length by the defendant's attorney, there was no showing that the investigator intentionally misrepresented those facts or made them in reckless disregard for the truth, and the remaining underlying facts clearly constituted probable cause for the issuance of the search warrants. Bevill v. State, 556 So. 2d 699, 1990 Miss. LEXIS 27 (Miss. 1990).

In determining whether probable cause existed for a particular search or search warrant, judges must scrupulously examine the facts in each case, make a careful evaluation, and make a determination in their own best judgment. Probable cause is not what some officer thought, and not some conduct that was simply unusual or that simply roused the suspicion that illegal activity could be afoot, when there was at the same time just as likely a possibility that nothing at all illegal was transpiring. Rather, it must be information reasonably leading an officer to believe that, then and there, contraband or evidence material to a criminal investigation would be found. Rooks v. State, 529 So. 2d 546, 1988 Miss. LEXIS 232 (Miss. 1988).

An affidavit and search warrant to recover stolen goods is not invalid for failure to state name of owner of goods. Wince v. State, 206 Miss. 189, 39 So. 2d 882, 1949 Miss. LEXIS 253 (Miss. 1949).

Any description of places and things in the affidavit and search warrant which will enable the officer making the search to locate them with reasonable certainty is sufficient. Mason v. State, 32 So. 2d 140 (Miss. 1947).

3. —Statement of belief.

An affidavit which merely states that affiant suspects a person named to be guilty of receiving stolen goods, and fails to allege that affiant "has reason to believe, and does believe" that the stolen articles, or some of them, are concealed on such person's premises, is an insufficient basis for a warrant to search such premises. Spann v. State, 235 Miss. 270, 108 So. 2d 887, 1959 Miss. LEXIS 425 (Miss. 1959).

A search of the premises of one accused of murder was illegal where both the affidavit and the search warrant used the word "suspects" instead of the language of the statute "has reason to believe, and does believe." Lancaster v. State, 188 Miss. 374, 195 So. 320, 1940 Miss. LEXIS 45 (Miss. 1940).

Under statute setting forth form of search warrant for stolen property, there must be an allegation both that the affiant has reason to believe and that he does believe that such stolen articles are concealed on premises, to constitute probable cause required for search of a person's premises for stolen goods, and mere suspicion however strong is not sufficient. Jones v. State, 180 Miss. 210, 177 So. 35, 1937 Miss. LEXIS 108 (Miss. 1937).

Under statute providing for issuance of search warrant where person has reason to believe and does believe that stolen articles are concealed on person's premises, information upon which he has reason to believe and does believe must be such as would lead a reasonably prudent person to believe facts which, if established, would be sufficient to amount to a probability. Jones v. State, 180 Miss. 210, 177 So. 35, 1937 Miss. LEXIS 108 (Miss. 1937).

An affidavit for search warrant, stating that affiant had suspicion that stolen hog was concealed on premises of accused and omitting words "and affiant has reason to believe, and does believe" that stolen hog was on premises of accused, was insufficient to support valid search warrant. Jones v. State, 180 Miss. 210, 177 So. 35, 1937 Miss. LEXIS 108 (Miss. 1937).

Affidavit for search warrant, stating that affiant had suspicion that stolen goods were concealed on premises of accused, instead of stating in statutory words that affiant "has reason to believe and does believe" that stolen goods were on premises of accused, was insufficient to support valid search warrant, since under constitution suspicion is not sufficient foundation for issuance of search warrant.

Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

4. Defective affidavit.

Miss. Code Ann. § 41-29-157(a)(2) requires the affiant's and the affidavit's presence before the issuing magistrate before a search warrant may properly issue and under Miss. Code Ann. § 99-25-15, the form of an affidavit for a search warrant indicates the presence of the affiant at issuance; thus, the telephonic search warrant was invalid and the search of defendant's apartment was a warrantless search. White v. State, 2002 Miss. LEXIS 311 (Miss. Oct. 24, 2002), op. withdrawn, sub. op., 2003 Miss. LEXIS 208 (Miss. Apr. 10, 2003), op. withdrawn, sub. op., 842 So. 2d 565, 2003 Miss. LEXIS 166 (Miss. 2003).

In prosecution for theft of a hog, where search warrant was void as being issued upon affidavit failing to state that complaining witness had reason to believe and did believe that stolen hog was concealed on premises of accused and was based only upon suspicion, admission in evidence of search warrant and evidence of officers acting under it was reversible error. Jones v. State, 180 Miss. 210, 177 So. 35, 1937 Miss. LEXIS 108 (Miss. 1937).

Where the sheriff's search was illegal because of a defect in the affidavit and search warrant, his testimony was inadmissible in a murder prosecution. Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

Testimony of state's witness that he saw the sheriff make a search of defendant's premises and the finding of the murder weapon, was inadmissible where the search made by the sheriff was illegal for defect in the affidavit and search warrant. Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

Testimony of state's witness that from her home, a short distance from that of defendant, she saw the search made by the sheriff and the murder weapon found, was inadmissible where the search made by the sheriff was illegal for defect. Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Sufficiency of affidavit for search warrant based on affiant's belief, based in turn on information, investigation, etc., by one whose name is not disclosed. 14 A.L.R.2d 605.

Disputation of truth of matters stated in affidavit in support of search warrant–modern cases. 24 A.L.R.4th 1266.

Seizure of books, documents, or other papers under search warrant not describing such items. 54 A.L.R.4th 391.

Propriety of execution of search warrant at nighttime. 41 A.L.R.5th 171.

Am. Jur.

68 Am. Jur. 2d, Searches and Seizures §§ 179, 183-185.

22 Am. Jur. Pl & Pr Forms (Rev), Searches and Seizures, Form 3 (affidavit for search warrant).

5 Am. Jur. Trials, Excluding Illegally Obtained Evidence §§ 1 et seq.

CJS.

79 C.J.S., Searches and Seizures §§ 51, 128 et seq., 148 et seq.

Practice References.

Adams and Blinka, Prosecutor's Manual for Arrest, Search and Seizure (Michie).

John Wesley Hall, Search and Seizure, Third Edition (Michie).

§ 99-25-17. Search warrant and capias.

"The State of Mississippi.

"To any lawful officer of ________ County:

"Oath having been made before the undersigned, a justice of the peace of said county, that a box of candles and a case of brogan shoes, the property of Edward

Nolly, on or about the ______ day of ______ 1906, in said county, were feloniously taken, stolen, and carried away and that suspicion rests on Samuel Miller as guilty of said crime, and affiant has reason to believe and does believe that the said stolen articles, or some of them, are concealed in or about the dwelling house, or outhouses connected therewith, of the said Samuel Miller, in said county:

"We command you, with the necessary assistance, to enter into the said dwelling house of Samuel Miller, and the outhouses connected therewith, and there diligently search for the said goods and chattels; and if the same, or any part thereof, be found, that you bring them, and also the body of said Samuel Miller, forthwith before the undersigned, or some other justice of the peace, to be disposed of according to law.

"Witness my hand, the ______ day of ______ , 1906.

"Andrew Sims, J.P."

A search warrant may be only to search for stolen goods, and omit the command to arrest the person.

HISTORY: Codes, 1892, § 1498; 1906, § 1570; Hemingway's 1917, § 1332; 1930, § 1358; 1942, § 2605.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Grand larceny, see § 97-17-41.

Petit larceny, see § 97-17-43.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of warrant.
3. Defective warrant.

1. In general.

The evidence was sufficient to support a finding that a circuit court judge who issued a search warrant was neutral and detached, in spite of the defendant's argument that the judge was not neutral as he was the son of a welfare department employee who was present during the issuance of the warrant, where the judge stated that he relied upon what the officers told him and what the affidavit contained; the fact that the judge was at the home of his mother, who worked for the welfare department, when the warrant was issued, did not taint his neutrality. Ormond v. State, 599 So. 2d 951, 1992 Miss. LEXIS 153 (Miss. 1992).

The highway patrol had no authority to deliver a stolen pickup truck, which had an altered vehicle identification number and had been seized from an innocent purchaser pursuant to a valid search warrant, to an insurance company, which had paid the owner the full value of the truck under a theft loss insurance policy and was therefore the lawful owner of the vehicle, absent court approval with no advance notice to the innocent purchaser of its intent to do so and without giving him an opportunity contest the matter in a court of competent jurisdiction; the appropriate procedure would have been for the highway patrol, once the truck served no further purpose in the criminal investigation or prosecution, to make a motion in the justice court for authority to release it to the insurance company, and to give the innocent purchaser and the insurance company reasonable notice of such application and an opportunity to be heard; however, the circuit court erred in directing return of the pickup truck to the innocent purchaser without making the insurance company a party to the hearing or giving it any notice of the proceeding, as this was a blatant violation of the insurance company's right to due process. Newman v. Stuart, 597 So. 2d 609, 1992 Miss. LEXIS 121 (Miss. 1992).

Property seized under a search warrant is an exercise of the police power of the State, and the State has the authority to keep and maintain control of the property until it is no longer needed in a criminal prosecution or investigation; while the property is thus seized, it is under the lawful custody of the magistrate who issued the warrant or the court having jurisdiction of the criminal prosecution in which the property is material evidence; when seized property is no longer needed for criminal prosecution by the State, it should be restored to its lawful owner, and if there is no conflict as to ownership, the court having custody of the property ordinarily directs its release to the owner; although stolen property may have been seized by an invalid search warrant, this does not entitle a thief or the person claiming title through the thief to its return; if there is a dispute as to ownership of allegedly stolen property, it is resolved through a civil proceeding in which the State has no interest, and the property is held until the question of ownership has been determined by a civil action in a court of competent jurisdiction. Newman v. Stuart, 597 So. 2d 609, 1992 Miss. LEXIS 121 (Miss. 1992).

Probable cause existed for the issuance of a search warrant for a defendant's residence, in spite of the defendants' argument that an informant's personal observation of marijuana at the residence 2 weeks earlier was stale and too remote, where 2 narcotics agents saw a sale of marijuana, which came from one of the defendants and from the house in question on the day of the search. Williams v. State, 583 So. 2d 620, 1991 Miss. LEXIS 396 (Miss. 1991).

There was no merit to a defendant's claim that the judge who issued 2 search warrants was not neutral and detached on the basis that the judge who went to the scene of the crime and saw the body also issued the search warrants, where there was no showing as to how this, in and of itself, created any prejudice or bias towards the defendant. Bevill v. State, 556 So. 2d 699, 1990 Miss. LEXIS 27 (Miss. 1990).

The search of a one-story building, pursuant to an affidavit and search warrant for a 2-story dwelling, did not violate the defendant's constitutional rights where the officer who made the affidavit for the search warrant had driven by the defendant's property in a rural area and thought that there was only one building-the 2-story building-on the property, the defendant owned all the property but resided in the one-story building, the officers went to the unoccupied 2-story building when they arrived on the property but received no answer, the defendant came to the front door of the one-story building and the officers went there and served him with the warrant, and the officers searched the one-story building and found marijuana in that building. The affidavit and search warrant sufficiently directed the officers to the defendant's premises where they found him in his residence, executed the warrant and discovered marijuana, and therefore the trial court was not in error when it denied the defendant's motion to suppress the evidence found in the search. White v. White, 556 So. 2d 685, 1990 Miss. LEXIS 90 (Miss. 1990).

A storm shed was within the "curtilage" of a residence and, therefore, within the scope of a search warrant that permitted a search of the residence, where the shed was approximately 150 to 175 feet from the house, the shed was the type of building used in connection with a residence, there were only a few trees separating the house and shed, and, most importantly, the house and shed were on the same side of the fence and not separated by it. Arnett v. State, 532 So. 2d 1003, 1988 Miss. LEXIS 457 (Miss. 1988).

A search conducted at 11:30 p.m. exceeded the officer's authority under the search warrant where the warrant authorized searches only "in the daytime"; thus, the fruits of the search were inadmissible at trial. Strange v. State, 530 So. 2d 1336, 1988 Miss. LEXIS 349 (Miss. 1988).

A judge who issues a search warrant is not required to confer on the searching officer the full range of authority allowed by law. The judge is within his prerogatives to limit the officer's authority, either by use of a pre-printed form or by interlined language. Strange v. State, 530 So. 2d 1336, 1988 Miss. LEXIS 349 (Miss. 1988).

Application for search warrant, whether under Code 1942, §§ 2604, 2614, is not also an application for appointment of special officer to serve it under Code 1942, § 1877, since sections dealing with search warrants make no provision for prayer for appointment of special officer to serve same, all such process being directed to be addressed to lawful officer. Claunch v. State, 208 Miss. 767, 45 So. 2d 581, 1950 Miss. LEXIS 295 (Miss. 1950).

2. Sufficiency of warrant.

A search warrant was not defective because it erroneously named the defendant as the owner of the property to be searched. The Fourth Amendment does not require that either the affidavit or the warrant give the name of the owner of the property to be searched; identifying the owner of the premises is relevant only to assist and aid in particularizing the place to be searched. Williams v. State, 583 So. 2d 620, 1991 Miss. LEXIS 396 (Miss. 1991).

An affidavit and search warrant to recover stolen goods is not invalid for failure to state name of owner of goods. Wince v. State, 206 Miss. 189, 39 So. 2d 882, 1949 Miss. LEXIS 253 (Miss. 1949).

Any description of places and things in the affidavit and search warrant which will enable the officer making the search to locate them with reasonable certainty is sufficient. Mason v. State, 32 So. 2d 140 (Miss. 1947).

A search warrant which bore the only date "this the 12th day of Johnson, 194-" was void and not amendable on the trial by the court's permission. Johnson v. State, 202 Miss. 233, 31 So. 2d 127, 1947 Miss. LEXIS 264 (Miss. 1947).

3. Defective warrant.

Evidence obtained by means of an improperly issued search warrant is inadmissible. Spann v. State, 235 Miss. 270, 108 So. 2d 887, 1959 Miss. LEXIS 425 (Miss. 1959).

Where the sheriff's search was illegal because of a defect in the affidavit and search warrant, his testimony was inadmissible in a murder prosecution. Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

Testimony of state's witness that he saw the sheriff make a search of defendant's premises and the finding of the murder weapon, was inadmissible where the search made by the sheriff was illegal for defect in the affidavit and search warrant. Bouchillon v. State, 179 Miss. 791, 177 So. 34, 1937 Miss. LEXIS 88 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Sufficiency of description in search warrant of automobile or other conveyance to be searched. 47 A.L.R.2d 1444.

Seizure of books, documents, or other papers under search warrant not describing such items. 54 A.L.R.4th 391.

Propriety of execution of search warrant at nighttime. 41 A.L.R.5th 171.

Sufficiency of description in warrant of person to be searched. 43 A.L.R.5th 1.

Admissibility of evidence obtained during nighttime search by federal officers where warrant does not contain "appropriate provision" authorizing execution at times other than daytime as required by Rule 41(c) of Federal Rules of Criminal Procedure. 58 A.L.R. Fed. 757.

Am. Jur.

68 Am. Jur. 2d, Searches and Seizures §§ 183, 184.

22 Am. Jur. Pl & Pr Forms (Rev), Searches and Seizures, Form 31 (search warrant).

5 Am. Jur. Trials, Excluding Illegally Obtained Evidence §§ 1 et seq.

CJS.

79 C.J.S., Searches and Seizures §§ 128 et seq.

Practice References.

Adams and Blinka, Prosecutor's Manual for Arrest, Search and Seizure (Michie).

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CHAPTER 27.

PROCEEDINGS FOR INTOXICATING BEVERAGE OFFENSES

Sec.
99-27-1. Petition to subpoena witnesses having knowledge of violations.
99-27-3. Taking testimony and filing for delivery to grand jury.
99-27-5. Grand jury not prevented from making investigation.
99-27-7. Duty of mayor or justice of the peace to issue warrant for offender.
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99-27-13. Owner may interpose claim to seized property; jurisdiction and procedure.
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99-27-25. Club to forfeit charter; boat may be sold.
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99-27-29. Common carriers, etc. to keep record of alcohol and wine deliveries; inspection by officers; competent evidence at trial.
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99-27-33. Circuit clerk to file and record statement; inspection by officers; competent evidence at trial; grand jury to investigate compliance.
99-27-35. Venue of prosecutions for unlawful shipment.
99-27-37. Counties and municipalities may appropriate money to procure evidence of liquor and narcotics violations.
99-27-39. Payment by liquor dealers of penalty to state, county, or municipality.
99-27-41. Concurrent jurisdiction given chancery courts for enforcing § 99-27-39.
99-27-43. Justices of the peace not to suspend sentences.
99-27-45. Witnesses compelled to testify; disclosure not to be used against witness.

§ 99-27-1. Petition to subpoena witnesses having knowledge of violations.

When any officer or five or more reputable citizens of any county shall file a petition with any mayor or justice of the peace of any county stating that they have reason to believe, and do believe, that a certain person or persons have knowledge touching a violation of the criminal law against the sale, barter, or possession of intoxicating liquors, or the unlawful keeping of the same, and who shall deposit sufficient money to cover the estimated cost of the proceedings or give bond to secure the same, such mayor or justice of the peace shall forthwith issue a subpoena returnable instanter, or on a day certain not later than five days, for such witnesses as may be named in said petition to appear before him at the time and place specified to answer all questions which may be propounded to him. If any witness who has been summoned shall fail to appear and testify, the mayor or justice of the peace may issue an attachment returnable before him at such time and place as he may designate, and said mayor or justice of the peace shall have full power to fine and imprison for contempt any witness failing to appear or refusing to testify, as well as for any other contempt.

HISTORY: Codes, 1906, § 1752; Hemingway's 1917, § 2091; 1930, § 1981; 1942, § 2620; Laws, 1900, ch. 106.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Alcoholic beverage regulations generally, see §§ 67-1-1 et seq. and 67-3-1 et seq.

Intoxicating beverage offenses, see §§ 97-31-5 et seq.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

RESEARCH REFERENCES

CJS.

48 C.J.S., Intoxicating Liquors §§ 425, 428, 429, 431, 434, 444.

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Cohen, Green and Slavin, Apprehending and Prosecuting the Drunk Driver: A Manual for Police and Prosecution (Matthew Bender).

Erwin, Cohen, Slavin and Essen, Defense of Drunk Driving Cases: Criminal – Civil (Matthew Bender).

Sacks, Garfield and Garfield, Criminal Defense Techniques (Matthew Bender Elite Products).

Mississippi Criminal and Traffic Law Manual (LexisNexis Law Enforcement).

§ 99-27-3. Taking testimony and filing for delivery to grand jury.

When said mayor or justice shall be ready to take the testimony of a witness or witnesses so summoned he may do so on private examination or in public, or he may admit such persons as he may deem advisable, but all the testimony so taken shall be in writing and subscribed to under oath administered by said justice, and any witness swearing falsely shall be guilty of and punished for perjury. The testimony so taken shall be filed with the circuit clerk of the county on or before the first day of the circuit court thereafter, and by such clerk delivered to the foreman of the grand jury.

HISTORY: Codes, 1906, § 1753; Hemingway's 1917, § 2092; 1930, § 1982; 1942, § 2621.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-27-5. Grand jury not prevented from making investigation.

The taking of such testimony by such mayor or justice shall not prevent the grand jury from making a thorough investigation of any matter inquired into before such justice of the peace, nor shall the same in any way bar any criminal prosecution not finally disposed of and punished by such justice of the peace.

HISTORY: Codes, 1906, § 1754; Hemingway's 1917, § 2093; 1930, § 1983; 1942, § 2622.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-27-7. Duty of mayor or justice of the peace to issue warrant for offender.

If, on investigation before such mayor or justice of the peace, it shall appear that any person has violated the law against unlawful retailing or giving away of intoxicating liquors, or that any person is unlawfully keeping intoxicating liquors, it shall be the duty of such mayor or justice of the peace, upon affidavit being made, to issue his warrant for the person or persons supposed to be guilty and dispose of the same as other criminal prosecutions before a mayor or justice of the peace under the laws of the state.

HISTORY: Codes, 1906, § 1755; Hemingway's 1917, § 2094; 1930, § 1984; 1942, § 2623.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Intoxicating beverage offenses, see § 97-31-5 et seq.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

§ 99-27-9. Statement not limited to proof of single violation at trial.

On the trial of all prosecutions for the violation of law by the sale or giving away of liquors, bitters, or drinks, the state shall not be confined to the proof of a single violation, but may give evidence in any one or more offenses of the same character committed anterior to the day laid in the indictment or in the affidavit, and not barred by the statute of limitations; but in such case, after conviction or acquittal on the merits, the accused shall not again be liable to prosecution for any offense of the same character committed anterior to the day laid in the indictment or in the affidavit.

HISTORY: Codes, 1892, § 1596; 1906, § 1762; Hemingway's 1917, § 2098; 1930, § 1986; 1942, § 2625.

Cross References — Alcoholic beverage regulations generally, see §§ 67-1-1 et seq. and 67-3-1 et seq.

Intoxicating beverage offenses, see §§ 97-31-5 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Date of sale.
3. Other sales.
4. Former jeopardy.

1. In general.

Admission of evidence of more than one distinct offense in liquor prosecution cannot be complained of for first time in supreme court. Bumpus v. State, 166 Miss. 276, 144 So. 897, 1932 Miss. LEXIS 311 (Miss. 1932).

Law authorizing state in liquor prosecution to give evidence of offenses committed before date alleged in indictment held constitutional. Buford v. State, 146 Miss. 66, 111 So. 850, 1927 Miss. LEXIS 229 (Miss. 1927).

Proof of possession of liquor, subsequent to date charged in indictment for possession, held competent. Smith v. State, 144 Miss. 872, 110 So. 690, 1926 Miss. LEXIS 424 (Miss. 1926).

This section [Code 1942, § 2625] not applicable to the mere keeping of liquor in violation of law. Lowe v. State, 127 Miss. 340, 90 So. 78, 1921 Miss. LEXIS 234 (Miss. 1921).

This section [Code 1942, § 2625] does not apply where one is charged with acting as the agent of the buyer of liquor. Page v. State, 105 Miss. 536, 62 So. 360, 1913 Miss. LEXIS 216 (Miss. 1913).

Evidence that defendant had been previously convicted before justice of peace of an offense of the same character, not authorized by this section [Code 1942, § 2625]. Webster v. State, 103 Miss. 259, 60 So. 214, 1912 Miss. LEXIS 166 (Miss. 1912).

State cannot prove more than one sale and then elect one on which it will ask conviction. King v. State, 99 Miss. 23, 54 So. 657, 1910 Miss. LEXIS 6 (Miss. 1910).

This section [Code 1942, § 2625] applies to prosecutions for violation of city ordinance. Thomas v. Yazoo City, 95 Miss. 395, 48 So. 821, 1909 Miss. LEXIS 243 (Miss. 1909).

Error to charge jury to convict if they believe either of the sales has been proven. Thomas v. Yazoo City, 95 Miss. 395, 48 So. 821, 1909 Miss. LEXIS 243 (Miss. 1909).

Defendant entitled to demand that state elect a particular sale on which it relied under indictment based solely on the ground of unlawful sale without a license. Kittrell v. State, 89 Miss. 666, 42 So. 609, 1906 Miss. LEXIS 66 (Miss. 1906).

2. Date of sale.

Under this section [Code 1942, § 2625] the date of the offense charged must be specifically laid. Cage v. State, 105 Miss. 326, 62 So. 358, 1913 Miss. LEXIS 213 (Miss. 1913).

3. Other sales.

Indictment charging unlawful sale of intoxicating liquor which alleged that sale was made on ________ day of July held insufficient to allow proof of more than one sale, since indictment must be specific and precise as to date of sale for which prosecution is being conducted, where state seeks to prove more than one sale. Walker v. State, 177 Miss. 807, 172 So. 138, 1937 Miss. LEXIS 162 (Miss. 1937).

Evidence of two distinct sales of liquor held inadmissible, where affidavit charged sale on or about specified date. Robins v. State, 151 Miss. 529, 118 So. 535, 1928 Miss. LEXIS 349 (Miss. 1928).

Evidence of sales of intoxicating liquors subsequent to date alleged in affidavit or indictment is not admissible. Horton v. State, 147 Miss. 37, 112 So. 591, 1927 Miss. LEXIS 293 (Miss. 1927).

Evidence of more than one distinct sale of liquor is inadmissible where date of offense is not specifically laid by indictment. Voss v. State, 144 Miss. 825, 110 So. 670, 1926 Miss. LEXIS 422 (Miss. 1926); Winningham v. State, 156 Miss. 659, 126 So. 477, 1930 Miss. LEXIS 205 (Miss. 1930).

After state introduces evidence of one offense of manufacturing liquor, introducing evidence of other offenses is error, notwithstanding statute. Parkinson v. State, 145 Miss. 237, 110 So. 513, 1926 Miss. LEXIS 21 (Miss. 1926).

Under affidavit charging sale of intoxicating liquor on given date, erroneous to admit evidence of more than one sale. Bailey v. State, 144 Miss. 467, 110 So. 230, 1926 Miss. LEXIS 395 (Miss. 1926).

To permit evidence of more than one offense occuring anterior to date laid in indictment to be given, date must be specifically laid therein. Prine v. State, 141 Miss. 667, 107 So. 280, 1926 Miss. LEXIS 477 (Miss. 1926).

Admitting evidence of more than one sale, unless made prior to date alleged, held error; if evidence makes it uncertain whether sale proved may have occurred subsequent to date alleged, conviction will be reversed. Maxey v. State, 140 Miss. 570, 106 So. 353, 1925 Miss. LEXIS 291 (Miss. 1925).

State cannot introduce evidence of sale of which another court of concurrent jurisdiction has exclusive jurisdiction. Hampton v. State, 138 Miss. 196, 103 So. 10, 1924 Miss. LEXIS 237 (Miss. 1924).

This section [Code 1942, § 2625] does not apply where evidence of only one sale was offered, and in such case evidence of sale made after date laid in indictment warrants conviction. Oliver v. State, 101 Miss. 382, 58 So. 6, 1912 Miss. LEXIS 5 (Miss. 1912).

Error to admit proof of sales after day fixed, though before indictment returned. Moses v. State, 100 Miss. 346, 56 So. 457, 1911 Miss. LEXIS 44 (Miss. 1911).

Other sales may be shown to have taken place within the period of limitation, and must be proved with same certainty as that relied on for conviction. Harvey v. State, 95 Miss. 601, 49 So. 268, 1909 Miss. LEXIS 274 (Miss. 1909).

4. Former jeopardy.

Former jeopardy to be available must be pleaded; supreme court will not look to another record for former acquittal or conviction; or go outside of record to ascertain facts. Bufkin v. State, 134 Miss. 116, 98 So. 455, 1923 Miss. LEXIS 239 (Miss. 1923).

Where proof showed offense was committed prior to September 25, plea of former acquittal supported by proof of acquittal on same charge on September 25 at which trial state offered evidence of sales prior thereto, must be sustained. Williams v. State, 102 Miss. 274, 59 So. 87, 1912 Miss. LEXIS 52 (Miss. 1912).

While indictment was pending in circuit court, no other prosecution for the same character of offense committed within two years prior to indictment could be commenced. Neely v. State, 100 Miss. 211, 56 So. 377, 1911 Miss. LEXIS 28 (Miss. 1911).

Plea of former conviction under indictment which left blank date of similar offense, held good against demurrer. Wadley v. State, 96 Miss. 77, 50 So. 494, 1909 Miss. LEXIS 19 (Miss. 1909).

RESEARCH REFERENCES

ALR.

Admissibility, in prosecution for illegal sale of intoxicating liquor, other sales. 40 A.L.R.2d 817.

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 290 et seq.

CJS.

48 C.J.S., Intoxicating Liquors §§ 618, 619-625.

§ 99-27-11. Seizure and destruction of intoxicating liquors and appliances permitted; writ of seizure for vehicles, etc.

No property rights shall exist in any person, natural or artificial, or be vested in them in any intoxicating liquors or intoxicating drinks prohibited by Chapter 31 of Title 97, Mississippi Code of 1972 or this chapter from being manufactured, or distilled, or sold, or possessed, nor shall any property rights exist in such persons of stills, fixtures, furniture, vehicles, automobiles or other motor-power means of transportation, or in boats, ships, or other water craft, or air-craft or any other articles, when such articles are being kept or used, directly or indirectly, as means and appliances to violate the provisions of said chapters, and all such things may be seized by any sheriff, or other lawful officer of this state and destroyed and rendered useless without any formal order of the court, and may be searched for and seized under the laws of this state. But all vehicles, conveyances, or other means of transportation above described, kept and used in handling of liquor or otherwise violating the provisions of said chapters may be first seized by such sheriff, or other lawful officer, who shall immediately make complaint under oath before the proper officer, or court, stating the facts connected with said seizure by him, giving the name or names of the person or persons found in possession or control of each article taken that was being used in transportation as well as the intoxicating liquors, or drinks and appliances or other articles seized and taken by him, and also giving the name of the owner of each article, if the same is known to him. Whereupon the said officer or court shall summon into his court all interested parties and may issue a writ of seizure, if said property, or any part of it is not in the possession of said officer, for the seizure of any of said property and the summoning of the interested parties into court, as in proceedings for the enforcement of purchase price liens against property.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163e; 1930, § 1979; 1942, § 2618; Laws, 1918, ch 189.

Editor's Notes — Sections 97-31-1 and 97-31-3, included in Chapter 31 of Title 97, referred to in this section, were repealed by Laws of 1988, ch. 562, § 3, effective from and after July 1, 1988.

Section 97-31-13, included in Chapter 31 of Title 97, referred to in this section, was repealed by Laws of 1980, ch. 453, effective from and after passage (approved May 1, 1980).

Cross References — Unlawful possession of alcoholic beverages or personal property used to violate alcoholic beverages control laws and sale thereof following seizure, see § 67-1-17.

Remedy to enforce lien, see § 85-7-31.

Owner may interpose claim to seized property, see § 99-27-13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Search and seizure.
3. Condemnation and forfeiture.

1. In general.

Section 67-1-17, providing for the seizure of unlawful alcoholic beverages, violates federal due process requirements by failing to provide for reasonable notice to the owner of a seized vehicle prior to its forfeiture. However, notice to the owner of a seized vehicle advising him of the pendency of a subsequent forfeiture proceeding, provided by this section, and the owner's opportunity to interpose a claim to the seized property prior to its forfeiture, provided by § 99-27-13, satisfy due process notice and hearing requirements. Holladay v. Roberts, 425 F. Supp. 61, 1977 U.S. Dist. LEXIS 18048 (N.D. Miss. 1977).

Where property misappropriated by dishonest employees consisted of quantity of intoxicating liquors belonging to their employer engaged in an illegal business, the employer cannot recover for his loss under a blanket fidelity bond. Smith v. Maryland Casualty Co., 252 Miss. 81, 172 So. 2d 574, 1965 Miss. LEXIS 1079 (Miss. 1965).

Despite the fact that the issuer of a blanket fidelity bond contracted that it would not defend any claim on the ground that the insured employer was engaged in an illegal business, no recovery was permitted for the misappropriation by dishonest employees of a quantity of intoxicating liquors, the possession of which was statutorily illegal. Smith v. Maryland Casualty Co., 252 Miss. 81, 172 So. 2d 574, 1965 Miss. LEXIS 1079 (Miss. 1965).

This provision does not abridge the right to cause arrest of persons who wilfully damage such property. Lenaz v. Conway, 234 Miss. 231, 105 So. 2d 762, 1958 Miss. LEXIS 481 (Miss. 1958).

This statute is highly penal and is to be strictly construed against the state. Brooks v. Wynn, 209 Miss. 156, 46 So. 2d 97, 1950 Miss. LEXIS 374 (Miss. 1950).

Purpose of this statute is to disqualify any persons, unlawfully in possession of liquor or motor vehicles used in connection therewith, from asserting right to their recovery, or for damages for their seizure, and its purpose is not to abridge state of its power to punish persons who steal liquor, or rob persons and take their liquor. Passons v. State, 208 Miss. 545, 45 So. 2d 131, 1950 Miss. LEXIS 273 (Miss. 1950), overruled, Simmons v. State, 568 So. 2d 1192, 1990 Miss. LEXIS 605 (Miss. 1990).

Statute held not to repeal laws prohibiting sale of liquor. Buford v. State, 146 Miss. 66, 111 So. 850, 1927 Miss. LEXIS 229 (Miss. 1927).

Action is maintainable against hotel for loss of suitcase containing intoxicating liquor. Edwards House v. Davis, 124 Miss. 485, 86 So. 849, 1920 Miss. LEXIS 515 (Miss. 1920).

2. Search and seizure.

Search and seizure of a motor vehicle may be made without a warrant if the information upon which the seizing officer acts is given him by a credible person. State use of Kemper County v. Brown, 219 Miss. 383, 68 So. 2d 419, 1953 Miss. LEXIS 399 (Miss. 1953).

Order of sale of defendant's automobile was invalid where proceedings therefore were based upon search of such automobile while it was parked near defendant's premises and seizure of a quantity of whisky found therein, without any warrant to search such automobile and without evidence or information that the automobile was being used in the actual transportation of liquor, it appearing that the search and seizure took place after a search of defendant's premises under a warrant authorizing a search for stolen property. Brooks v. Wynn, 209 Miss. 156, 46 So. 2d 97, 1950 Miss. LEXIS 374 (Miss. 1950).

An officer may seize an automobile used in the transportation of intoxicating liquors in violation of law without previously obtaining a writ of seizure. Owens v. Reese, 203 Miss. 322, 33 So. 2d 834, 1948 Miss. LEXIS 272 (Miss. 1948).

A writ of prohibition will not lie to prevent a sheriff who has seized an automobile without obtaining in advance a writ of seizure and other officials from taking further steps in a case pending for condemnation and sale of the automobile. Owens v. Reese, 203 Miss. 322, 33 So. 2d 834, 1948 Miss. LEXIS 272 (Miss. 1948).

3. Condemnation and forfeiture.

In an action to condemn and sell an automobile which had been seized while in possession of a third person, who had allegedly used it for transporting intoxicating liquor, the owner, in interposing his claim, was entitled to give a forthcoming bond and gain possession thereof pending a hearing, both in the circuit court and on appeal, as to his ownership thereof, and as to whether he had knowingly permitted it to be used for unlawful purposes in violation of this section [Code 1942, § 2618] and Code 1942, § 2619. Stringer v. State, 229 Miss. 412, 91 So. 2d 263, 1956 Miss. LEXIS 620 (Miss. 1956).

Under this section [Code 1942, § 2618], and Code 1930, § 2007 [Code 1942, § 2646], and under Laws of 1938, Chap. 341 [Code 1942, § 1073], proceedings to abate nuisances of selling intoxicating liquors and carrying on gambling on the premises described, and a decree enjoining the defendant from operating such nuisances on such premises, and providing for the condemnation and sale of all personal property used in connection therewith were proper and warranted. Caravella v. State, 185 Miss. 1, 186 So. 653, 1939 Miss. LEXIS 118 (Miss. 1939).

Statute held not to authorize confiscation or forfeiture of vehicles used in attempt to manufacture. Powell v. State, 137 Miss. 464, 102 So. 540, 1925 Miss. LEXIS 7 (Miss. 1925).

Statute held not to authorize seizure and sale of vehicles transporting still and appliances for making intoxicating liquors. Powell v. State, 137 Miss. 464, 102 So. 540, 1925 Miss. LEXIS 7 (Miss. 1925).

RESEARCH REFERENCES

ALR.

Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 377 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 145 (judgment or decree of forfeiture of illicit liquor).

CJS.

48 C.J.S., Intoxicating Liquors §§ 882 et seq.

§ 99-27-13. Owner may interpose claim to seized property; jurisdiction and procedure.

If any person claims the intoxicating liquors seized on any of the appliances either for handling, making, possessing, or transporting which have been seized, he may put in his claim therefor under oath stating in detail why said property, or any of it so seized, should not be destroyed, or sold for the benefit of the county, and said affidavit shall state the market value of the property so claimed by him, which amount as so fixed shall determine the jurisdiction of the court as to the amount involved or the value of the property. If the affidavit fixes the value of the property at $200.00 or less and the proceeding is returnable before a justice of the peace otherwise having jurisdiction, the said justice of the peace shall finally dispose of the issue in the case joined under his direction. But if the affidavit fixes the value of the property at more than $200.00 the justice of the peace before whom the case is returnable shall forthwith transfer said cause to the circuit court of the county having jurisdiction to try the case, where the issues shall, under the direction of the circuit court, be joined between the State of Mississippi and the said claimant, and the case there tried as other cases. But if the affidavit of the officer in the first instance shows that the value of the property does not exceed $200.00 and no claim is interposed by the parties in interest, on or before the return day of the summons and writ of seizure, the justice of the peace on the return day shall hear and dispose of the property, and may order all liquors, stills or integral parts thereof and all other unlawful articles to be destroyed, and may condemn all vehicles of transportation to be sold and the proceeds, after deducting the costs, paid into the county treasury to the credit of the general county fund. In the event the property is claimed by parties interested and issues joined in any court having jurisdiction of the case, such court trying the case shall have the rights of the state and the claimant determined in a trial according to the rules of procedure in such court, and if it be determined that any property involved in such trial was kept, possessed, manufactured, or used in violation of any provision of Chapter 31 of Title 97, Mississippi Code of 1972 or this chapter it shall be ordered destroyed and rendered useless for unlawful use, but all vehicles, boats and other means of transportation used in transporting articles in violation of said chapters shall be condemned to be sold and the proceeds from such sale, after paying the costs of the courts, shall be placed in the county treasury to the credit of the general county fund.

But in all such trials and proceedings as provided for in this section the claimant may, before he shall file his claim, be required to execute a solvent bond in sufficient amount to cover all costs that may likely accrue, conditioned that he will pay all costs in the case that may be adjudged against him, and in the event the claimant fails to establish his claim, or any part of it to said articles, he may be taxed with all, or any part of the costs of the case, and judgment shall go against his sureties for all costs adjudged against him.

HISTORY: Codes, 1906, §§ 1750, 1751; Hemingway's 1917, §§ 2089, 2090; 1930, § 1980; 1942, § 2619.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Sections 97-31-1 and 97-31-3, included in Chapter 31 of Title 97, referred to in this section, were repealed by Laws of 1988, ch. 562, § 3, effective from and after July 1, 1988.

Section 97-31-13, included in Chapter 31 of Title 97, referred to in this section, was repealed by Laws of 1980, ch. 453, effective from and after passage (approved May 1, 1980).

Cross References — Trial of right of property, see §§ 11-23-7 et seq.

Seizure, forfeiture, and disposal of property seized pursuant to violation for unlawful possession of alcoholic beverages, see §§ 67-1-17, 67-1-18.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.
3. Owner's knowledge or consent.

1. In general.

Section 67-1-17, providing for the seizure of unlawful alcoholic beverages, violates federal due process requirements by failing to provide for reasonable notice to the owner of a seized vehicle prior to its forfeiture. However, notice to the owner of a seized vehicle advising him of the pendency of a subsequent forfeiture proceeding, provided by § 99-27-11, and the owner's opportunity to interpose a claim to the seized property prior to its forfeiture, provided by this section, satisfy due process notice and hearing requirements. Holladay v. Roberts, 425 F. Supp. 61, 1977 U.S. Dist. LEXIS 18048 (N.D. Miss. 1977).

Evidence held to sustain finding that liquor was consigned to, and the property of, residents of Mississippi. Hall v. State, 247 Miss. 896, 157 So. 2d 781, 1963 Miss. LEXIS 367 (Miss. 1963).

In an action to condemn and sell an automobile which had been seized while in possession of a third person, who had allegedly used it for transporting intoxicating liquor, the owner, in interposing his claim, was entitled to give a forthcoming bond and gain possession thereof pending a hearing, both in the circuit court and on appeal, as to his ownership thereof, and as to whether he had knowingly permitted it to be used for unlawful purposes in violation of Code 1942, § 2618 and this section [Code 1942, § 2619]. Stringer v. State, 229 Miss. 412, 91 So. 2d 263, 1956 Miss. LEXIS 620 (Miss. 1956).

Where the owner of an automobile, under a conditional sales contract, moved the trial court to enter an order releasing to him the automobile, which had been seized by the sheriff after allegedly being used by a third person to transport liquor, and filed a forthcoming bond, the mere fact that the bond was designated a "replevin bond" did not constitute the commencement of an action of replevin, so as to bar the owner under the principle that replevin does not allow for property in custodia legis. Stringer v. State, 229 Miss. 412, 91 So. 2d 263, 1956 Miss. LEXIS 620 (Miss. 1956).

2. Jurisdiction.

Affidavit or declaration in proceeding to condemn property used in violation of prohibition laws must state value of property; justice of the peace has no power to condemn such property if value exceeds $200; in proceeding before justice to condemn such property any person may raise question of jurisdiction on appeal to circuit court. Vance v. State, 130 Miss. 251, 93 So. 881, 1922 Miss. LEXIS 198 (Miss. 1922).

3. Owner's knowledge or consent.

In an action to condemn and sell an automobile which had been seized while in possession of a third person, who had allegedly used it for the transportation of intoxicating liquors, while the state's proof that the third person had been seen driving the automobile from time to time for a period of three or four months was a circumstance for the consideration of the jury as to the owner's knowledge, it was not sufficient as a matter of law to charge the owner with knowledge that the third person was using the automobile for an unlawful purpose. Stringer v. State, 229 Miss. 412, 91 So. 2d 263, 1956 Miss. LEXIS 620 (Miss. 1956).

In a proceeding to condemn and sell an automobile for illegal use in the transportation of whisky, in order to authorize the state to condemn the automobile, it was necessary to prove that the owner knowingly consented for the driver to transport whisky in the owner's automobile. Lowery v. State, 219 Miss. 547, 69 So. 2d 213, 1954 Miss. LEXIS 362 (Miss. 1954).

Where undisputed facts showed that neither taxicab owner nor chauffeur knew that passenger was using car to transport intoxicating liquors, and that the owner had not been negligent in employing the chauffeur, and had directed him not to use the car for such illegal purposes, the circuit court could not order the car forfeited and destroyed. Aldinger v. State, 115 Miss. 314, 75 So. 441, 1917 Miss. LEXIS 172 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 422 et seq.

CJS.

48 C.J.S., Intoxicating Liquors §§ 882 et seq.

§ 99-27-15. Affidavit for search warrant; contents of warrant; service and return.

Upon the affidavit of any credible person that he has reason to believe and does believe: (1) That intoxicating liquor is being stored, kept, owned, controlled, or possessed, in violation of the laws of the state, at any designated place or within any designated receptacle, which place is to be stated in the affidavit; or (2) that intoxicating liquor is being sold or offered for sale contrary to law at any designated place; or (3) that liquor is being manufactured or distilled, or attempted to be manufactured or distilled at any designated place, in violation of the laws of the state; or (4) that intoxicating liquor is being transported, attempted to be transported within the state at or over or through any designated place, contrary to the laws of the state, it shall be the duty of any justice of the peace of the county or county judge, or the judge of the circuit court of the district or the chancellor of the district in which the place is situated, to issue a search warrant, directed to the sheriff or any constable of the county, or if in a municipality, to the sheriff or any constable or marshal or policeman therein, commanding him to proceed in the day or night time, to enter by breaking if necessary, and to diligently search any building, room in a building, outhouses, place, wagon, cart, buggy, automobile, motorcycle, motor truck, water or air craft or other vehicle, as may be designated in the affidavit, and to seize said intoxicating liquor, and any wagon, buggy, cart, automobile, motorcycle, motor truck, water or air craft or other vehicle used or attempted to be used in the transporting of the same, or any still or distillery or integral part of the same including appliances, vessels and equipment pertaining thereto used in making or manufacturing or attempting to make or manufacture said intoxicating liquor, and to hold the same until disposed of by law, and to arrest the person, or persons in possession and control of the same.

The writ shall be returnable instanter or on a day stated and a copy shall be served on the owner or person in possession if such person be present or readily found.

HISTORY: Codes, 1930, § 1975; 1942, § 2614; Laws, 1924, ch. 244.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Seizure of alcoholic beverages and other related personal property subject to forfeiture for unlawful possession thereof, see §§ 67-1-17, 67-1-18.

Intoxicating beverage offenses, see §§ 97-31-5 et seq.

Arrests made without warrant, see § 99-3-7.

Form of affidavit for search warrant, see § 99-27-17.

Form of search warrant, see § 99-27-19.

Search of motor vehicles, etc. and seizures of liquor without warrant, see § 99-27-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Affidavit, sufficiency.
3. Probable cause for issuing warrant.
4. Warrant, sufficiency.
5. Variance between warrant and affidavit.
6. Who may issue warrant.
7. Who may serve warrant.
8. Return of service.
9. Execution of warrant.
10. Search of person.
11. Evidence procured by search.
12. Miscellaneous.

1. In general.

Search warrants are in the nature of criminal process and may be invoked only in furtherance of public prosecutions, and statute providing for their issuance and execution are sustained, under constitutional provisions forbidding unreasonable search and seizure, only as a necessary means in suppression of crime and detection and punishment of criminals. Brooks v. Wynn, 209 Miss. 156, 46 So. 2d 97, 1950 Miss. LEXIS 374 (Miss. 1950).

Provisions for search and seizure are construed strictly against the state. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

Issuance of search warrants in case involving possession of intoxicating liquors upon the statutory affidavit, that the affiant "has reason to believe and does believe," etc., does not violate Art. 3, § 23 of the state constitution. Armstrong v. State, 195 Miss. 300, 15 So. 2d 438, 1943 Miss. LEXIS 155 (Miss. 1943).

A search warrant, issued in case involving possession of intoxicating liquors upon the statutory affidavit that the affiant "has reason to believe and does believe," was not invalid as a violation of the Fourth Amendment to the federal constitution, since such amendment applies only to the exercise of federal authority and has no application to state action. Armstrong v. State, 195 Miss. 300, 15 So. 2d 438, 1943 Miss. LEXIS 155 (Miss. 1943).

The fact that a search warrant is issued on Sunday does not render it invalid, where there is no express prohibition in that respect by statutory enactment. Armstrong v. State, 195 Miss. 300, 15 So. 2d 438, 1943 Miss. LEXIS 155 (Miss. 1943).

This section [Code 1942, § 2614] is not unconstitutional. Winters v. State, 142 Miss. 71, 107 So. 281, 1926 Miss. LEXIS 66 (Miss. 1926); Loeb v. State, 133 Miss. 883, 98 So. 449, 1923 Miss. LEXIS 196 (Miss. 1923); Bufkin v. State, 134 Miss. 1, 98 So. 452, 1923 Miss. LEXIS 238 (Miss. 1923).

Statutory provision that search warrant may issue upon affidavit of any credible person, that he has reason to believe, and does believe, certain facts, held not to violate constitution. Winters v. State, 142 Miss. 71, 107 So. 281, 1926 Miss. LEXIS 66 (Miss. 1926).

Constitution held to prohibit only unreasonable searches and seizures. Moore v. State, 138 Miss. 116, 103 So. 483, 1925 Miss. LEXIS 105 (Miss. 1925).

Reasonableness of search or seizure is judicial question for court in each case. Moore v. State, 138 Miss. 116, 103 So. 483, 1925 Miss. LEXIS 105 (Miss. 1925).

Search warrant after date fixed therein for execution and return becomes functus officio. Taylor v. State, 137 Miss. 217, 102 So. 267, 1924 Miss. LEXIS 329 (Miss. 1924).

Search of premises under warrant obtained after partial search without warrant or permission unlawful. Robinson v. State, 136 Miss. 850, 101 So. 706, 1924 Miss. LEXIS 176 (Miss. 1924).

Land of owner cannot be searched without his consent, except by state or county officer having lawful search warrant. Helton v. State, 136 Miss. 622, 101 So. 701, 1924 Miss. LEXIS 171 (Miss. 1924).

Who may avail of constitutional privilege against unlawful searches and seizures stated. Lee v. Oxford, 134 Miss. 647, 99 So. 509, 1924 Miss. LEXIS 318 (Miss. 1924).

Constitutional prohibition of unreasonable seizure or search extends to all property and possessions. Falkner v. State, 134 Miss. 253, 98 So. 691, 1924 Miss. LEXIS 259 (Miss. 1924).

Officer held not permitted to make search without valid warrant. State v. Watson, 133 Miss. 796, 98 So. 241, 1923 Miss. LEXIS 190 (Miss. 1923).

Constitutional prohibition against unreasonable searches and seizures held not to refer to unauthorized acts of private persons. Hampton v. State, 132 Miss. 154, 96 So. 165, 1923 Miss. LEXIS 43 (Miss. 1923).

2. Affidavit, sufficiency.

The description in the affidavit and search warrant was sufficient to authorize a search where the sheriff, who made the affidavit, swore in the affidavit that intoxicating liquor was near the residence of "John Doe," and then particularly described the location, it appearing that at the time the sheriff was without knowledge as to the ownership of the house. Traxler v. State, 244 Miss. 403, 142 So. 2d 14, 1962 Miss. LEXIS 462 (Miss. 1962).

The affidavit upon which a warrant was issued to search the premises of appellant which did not describe affiant as a credible person was not invalid despite the language of this section [Code 1942, § 2614] providing "upon the affidavit of any credible person," etc. West v. State, 49 So. 2d 271 (Miss. 1950).

Affidavit for search warrant should recognize, in compliance with directory provisions of statutes, that affiant is credible person, not because statute requires affidavit to so state, but because it is safer practice that the fact of affidavit having been made by credible person should be given attestation by jurat of officer before whom it is made. Serio v. Brookhaven, 208 Miss. 620, 45 So. 2d 257, 1950 Miss. LEXIS 279 (Miss. 1950).

Issuance of search warrant is adjudication that affidavit on which the warrant is issued was made by credible person, especially in absence of any proof to contrary. Serio v. Brookhaven, 208 Miss. 620, 45 So. 2d 257, 1950 Miss. LEXIS 279 (Miss. 1950).

Description of premises of defendant in affidavit and search warrant as "located at 97 feet on First Street by 148 feet on Warren Avenue, Lot A, Block 4, Swalm Subdivision," and authorizing search of buildings and vehicles owned or used by defendant located as stated, is sufficient description of lot used by defendant, 50 feet by 60 feet, on corner, being portion of described property which was owned by defendant's family, since description was sufficient to enable officer to locate with reasonable certainty place to be searched, and officer did locate it by means of such description without difficulty. Serio v. Brookhaven, 208 Miss. 620, 45 So. 2d 257, 1950 Miss. LEXIS 279 (Miss. 1950).

This section [Code 1942, § 2614] does not require that the affidavit for search warrant recite that affiant is a credible person, but affidavit of such person that he has reason to believe and does believe certain facts as stated in this section entitles proper officer to issue search warrant. Serio v. Brookhaven, 208 Miss. 620, 45 So. 2d 257, 1950 Miss. LEXIS 279 (Miss. 1950); Harper v. State, 209 Miss. 563, 47 So. 2d 854, 1950 Miss. LEXIS 414 (Miss. 1950).

Affidavit should allege that affiant is a credible person, and is fatally defective if it omits the allegation that the affiant, if he does not have personal knowledge, has reason to believe and does believe that the offense is being or has been committed. Laster v. Ard, 42 So. 2d 737 (Miss. 1949).

Affidavit form, signed by sheriff, for issuance of search warrant in intoxicating liquor case, presented to justice of the peace by deputy sheriff, violates requirement of Art. 3, § 23 of Constitution that search warrant be supported by oath or affirmation, where sheriff was not personally present before justice of the peace, and evidence obtained under search warrant issued pursuant to such affidavit was illegally obtained and inadmissible in evidence. Boyd v. State, 206 Miss. 573, 40 So. 2d 303, 1949 Miss. LEXIS 285 (Miss. 1949).

Description in affidavit and search warrant of the premises to be searched for intoxicating liquor as being "in the dwelling house, outhouses, on the premises, in the automobiles or other vehicles used or occupied by, and on the person of Earl Smith ________ at ________ located on the Terry Highway about 250 yards south of the city limits of Jackson and on the east side of said Terry Highway facing west in said county and state," was sufficient. Smith v. State, 187 Miss. 96, 192 So. 436, 1939 Miss. LEXIS 100 (Miss. 1939).

Affidavit for search warrant, made at mayor's suggestion, where another informed affiant defendant possessed liquor, held sufficient. Buck v. State, 153 Miss. 710, 121 So. 147, 1929 Miss. LEXIS 53 (Miss. 1929).

Affidavit for search warrant held void for failure to allege that liquors were kept for purpose of sale in violation of law. Estes v. State, 152 Miss. 555, 120 So. 444, 1929 Miss. LEXIS 224 (Miss. 1929).

Affidavit alleging liquors were being sold or offered for sale in violation of law held sufficient to authorize issuance of search warrant. Banks v. Jackson, 152 Miss. 844, 120 So. 209, 1929 Miss. LEXIS 220 (Miss. 1929).

Search warrant affidavit alleging liquor was being manufactured, possessed, sold, or offered for sale or given away in violation of law held not defective because joining several grounds disjunctively. Banks v. Jackson, 152 Miss. 844, 120 So. 209, 1929 Miss. LEXIS 220 (Miss. 1929).

Affidavit for liquor search warrant, sufficiently describing premises, but alleging they were used by unknown occupant, held sufficient. Banks v. Jackson, 152 Miss. 844, 120 So. 209, 1929 Miss. LEXIS 220 (Miss. 1929).

Affidavit for liquor search warrant describing place by street and number is sufficient. Banks v. Jackson, 152 Miss. 844, 120 So. 209, 1929 Miss. LEXIS 220 (Miss. 1929).

Affidavit for search warrant held sufficient, though not signed by affiant. Winters v. State, 142 Miss. 71, 107 So. 281, 1926 Miss. LEXIS 66 (Miss. 1926).

Description of places and things in affidavit and search warrant held sufficient; any description of places or things to be searched enabling officer to locate them with reasonable certainty is sufficient. Borders v. State, 138 Miss. 788, 104 So. 145, 1925 Miss. LEXIS 99 (Miss. 1925); Mason v. State, 32 So. 2d 140 (Miss. 1947).

Affidavit for search warrant held sufficient as to description of premises. Matthews v. State, 134 Miss. 807, 100 So. 18, 1924 Miss. LEXIS 327 (Miss. 1924).

Affidavit for search warrant must specially designate place to be searched. Spears v. State, 99 So. 361 (Miss. 1924).

Charge that defendant violated law equivalent to charging that act was done unlawfully. Bufkin v. State, 134 Miss. 1, 98 So. 452, 1923 Miss. LEXIS 238 (Miss. 1923).

Affidavit for search warrant held sufficient to describe liquors to be seized. Loeb v. State, 133 Miss. 883, 98 So. 449, 1923 Miss. LEXIS 196 (Miss. 1923).

Affidavit must aver reasons to believe and actual belief that liquors are being kept on premises. State v. Watson, 133 Miss. 796, 98 So. 241, 1923 Miss. LEXIS 190 (Miss. 1923).

Affidavit for search warrant, not stating belief as to violation, held void. Turner v. State, 133 Miss. 738, 98 So. 240, 1923 Miss. LEXIS 189 (Miss. 1923); State v. Watson, 133 Miss. 796, 98 So. 241, 1923 Miss. LEXIS 190 (Miss. 1923); Porter v. State, 135 Miss. 789, 100 So. 377, 1924 Miss. LEXIS 70 (Miss. 1924); Morrison v. State, 140 Miss. 221, 105 So. 497, 1925 Miss. LEXIS 252 (Miss. 1925).

3. Probable cause for issuing warrant.

An affidavit for a search warrant which does not allege any facts or circumstances from which the justice of the peace could judicially ascertain or determine probable cause, but sets forth nothing more than conclusions of the affiant, violates the Fourth Amendment to the federal constitution. Walker v. State, 192 So. 2d 270, 1966 Miss. LEXIS 1240 (Miss. 1966); Harkins v. State, 193 So. 2d 133, 1966 Miss. LEXIS 1278 (Miss. 1966).

Issuance of search warrant is no longer a conclusive judicial finding that probable cause existed for search. O'Bean v. State, 184 So. 2d 635, 1966 Miss. LEXIS 1478 (Miss. 1966).

Issuance of warrant is adjudication that there was probable cause therefor, and such adjudication is conclusive and cannot be collaterally attacked on issue between state and accused as to latter's guilt or innocence. Harper v. State, 209 Miss. 563, 47 So. 2d 854, 1950 Miss. LEXIS 414 (Miss. 1950).

A judicial finding of the officer issuing the search warrant, of the existence of probable cause therefor, is conclusive and cannot be inquired into. Armstrong v. State, 195 Miss. 300, 15 So. 2d 438, 1943 Miss. LEXIS 155 (Miss. 1943).

The issuing of a search warrant on the affidavit made by the sheriff is res adjudicata of the sufficiency of the affidavit, which cannot be inquired into on appeal from conviction in a prosecution for transporting intoxicating liquor. Carr v. State, 187 Miss. 535, 192 So. 569, 1940 Miss. LEXIS 201 (Miss. 1940).

In a prosecution for unlawful possession of intoxicating liquor, the credibility of the informant and question of probable cause in connection with the search and seizure could not be attacked where a valid search warrant was issued, its issuance being a conclusive adjudication that there was probable cause. Goss v. State, 187 Miss. 72, 192 So. 447, 1939 Miss. LEXIS 105 (Miss. 1939).

The sufficiency of the officer's reason for making the affidavit may not be inquired into where the justice of the peace, in compliance with the statutory duty, has issued the warrant after adjudging the facts to be sufficient to constitute probable cause, there being a difference between a search upon probable cause without affidavit and warrant, in which case the question of probable cause is open to inquiry, and a case where a justice of the peace or other officer authorized to issue a warrant adjudges the existence of probable cause by issuing a warrant upon the affidavit. Creel v. State, 183 Miss. 158, 183 So. 510, 1938 Miss. LEXIS 228 (Miss. 1938).

Affidavit for search warrant held to show probable cause. Bufkin v. State, 134 Miss. 1, 98 So. 452, 1923 Miss. LEXIS 238 (Miss. 1923).

What constitutes "probable cause" justifying writ of seizure stated. Loeb v. State, 133 Miss. 883, 98 So. 449, 1923 Miss. LEXIS 196 (Miss. 1923).

4. Warrant, sufficiency.

The description in the affidavit and search warrant was sufficient to authorize a search where the sheriff, who made the affidavit, swore in the affidavit that intoxicating liquor was near the residence of "John Doe," and then particularly described the location, it appearing that at the time the sheriff was without knowledge as to the ownership of the house. Traxler v. State, 244 Miss. 403, 142 So. 2d 14, 1962 Miss. LEXIS 462 (Miss. 1962).

Descriptions in search warrants need not be positively specific and definite, but are sufficient if the places and things to be searched are designated in such manner that the officer making the search may locate them with reasonable certainty. West v. State, 42 So. 2d 751 (Miss. 1949).

Description in search warrant of defendant's residence as being located on certain road one and one-half miles from certain city was not insufficient merely because it did not state in which direction from the city limits the property to be searched was located. West v. State, 42 So. 2d 751 (Miss. 1949).

Omission of the official position of person before whom search warrant was returnable did not render warrant void; such position may be shown by proof other than by warrant or affidavit. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Search warrant returnable before issuing justice of peace on "the... day of May, 1949" does not comply with mandatory provision of this section [Code 1942, § 2614] that warrant "shall be returnable instanter or on a day stated," and search conducted under authority of such warrant is illegal. Buxton v. State, 205 Miss. 692, 39 So. 2d 310, 1949 Miss. LEXIS 460 (Miss. 1949).

Warrant which describes the place to be searched as "in the residence" and the outhouses and grounds "near the residence" of a specified person does not authorize a search of the residence of another 150 yards away, even though the residence of such other person is owned by the person specified in the warrant and is located on the same tract of land. Cox v. State, 201 Miss. 568, 29 So. 2d 661, 1947 Miss. LEXIS 421 (Miss. 1947).

A search warrant describing location to be searched as in the dwelling house, outhouses on the premises used or occupied by a named individual on the place of another named individual "on cross roads 2 miles south of Soreby's store in 2nd house on left side of road," was sufficiently definite so as to be valid where the officer located the place to be searched from such description. Williams v. State, 198 Miss. 848, 23 So. 2d 692, 1945 Miss. LEXIS 260 (Miss. 1945).

Description in affidavit and search warrant of the premises to be searched for intoxicating liquor as being "in the dwelling house, outhouses, on the premises, in the automobiles or other vehicles used or occupied by, and on the person of Earl Smith ________ at ________ located on the Terry Highway about 250 yards south of the city limits of Jackson and on the east side of said Terry Highway facing west in said county and state," was sufficient. Smith v. State, 187 Miss. 96, 192 So. 436, 1939 Miss. LEXIS 100 (Miss. 1939).

The omission of the word "good" is not fatal to the affidavit and search warrant, since the statute uses the words "has reason to believe and does believe," notwithstanding that the court in State v.

Watson, 133 M 796, 98 So 241, said that the affidavit should state that the affiant had "good reason to believe and does believe." Creel v. State, 183 Miss. 158, 183 So. 510, 1938 Miss. LEXIS 228 (Miss. 1938).

Making search warrant issued by competent judicial officer returnable before circuit court did not render it void. Hanson v. State, 174 Miss. 88, 164 So. 9, 1935 Miss. LEXIS 55 (Miss. 1935).

Search warrant having caption, "State of Mississippi, Bolivar County: To any lawful officer of Bolivar County, Mississippi" held valid. Mai v. State, 152 Miss. 225, 119 So. 177, 1928 Miss. LEXIS 247 (Miss. 1928), overruled, O'Bean v. State, 184 So. 2d 635, 1966 Miss. LEXIS 1478 (Miss. 1966).

Search warrant made returnable to past date was void. Buckley v. State, 150 Miss. 808, 117 So. 115, 1928 Miss. LEXIS 159 (Miss. 1928).

Search warrant with no return day named therein held illegal and evidence procured thereby inadmissible under this section [Code 1942, § 2614]. Powell v. State, 146 Miss. 677, 111 So. 738, 1927 Miss. LEXIS 211 (Miss. 1927).

Search warrant held not vitiated by command to officer to bring liquor, if practicable, before officer issuing warrant. Hendricks v. State, 144 Miss. 87, 109 So. 263, 1926 Miss. LEXIS 340 (Miss. 1926).

"John Doe" warrant held void. Brewer v. State, 142 Miss. 100, 107 So. 376, 1926 Miss. LEXIS 73 (Miss. 1926).

Description of places and things in affidavit and search warrant held sufficient; any description of places or things to be searched enabling officer to locate them with reasonable certainty is sufficient. Borders v. State, 138 Miss. 788, 104 So. 145, 1925 Miss. LEXIS 99 (Miss. 1925).

Search warrant directed to any lawful officer and executed by sheriff held not void. Matthews v. State, 134 Miss. 807, 100 So. 18, 1924 Miss. LEXIS 327 (Miss. 1924).

Search warrant may be returnable in less than five days from issuance. Bufkin v. State, 134 Miss. 1, 98 So. 452, 1923 Miss. LEXIS 238 (Miss. 1923).

Warrant for search of "premises" held invalid. Rignall v. State, 134 Miss. 169, 98 So. 444, 1923 Miss. LEXIS 237 (Miss. 1923).

A search warrant is void which does not specifically designate the place to be searched and the person and thing to be seized. Miller v. State, 129 Miss. 774, 93 So. 2, 1922 Miss. LEXIS 87 (Miss. 1922); Smith v. State, 133 Miss. 730, 98 So. 344, 1923 Miss. LEXIS 195 (Miss. 1923); Owens v. State, 133 Miss. 753, 98 So. 233, 1923 Miss. LEXIS 188 (Miss. 1923); State v. Watson, 133 Miss. 796, 98 So. 241, 1923 Miss. LEXIS 190 (Miss. 1923); Loeb v. State, 133 Miss. 883, 98 So. 449, 1923 Miss. LEXIS 196 (Miss. 1923); Fatimo v. State, 134 Miss. 175, 98 So. 537, 1924 Miss. LEXIS 249 (Miss. 1924); Falkner v. State, 134 Miss. 253, 98 So. 691, 1924 Miss. LEXIS 259 (Miss. 1924); Spears v. State, 99 So. 361 (Miss. 1924); Butler v. State, 135 Miss. 885, 101 So. 193, 1924 Miss. LEXIS 87 (Miss. 1924); Sanders v. State, 141 Miss. 615, 106 So. 822, 1926 Miss. LEXIS 460 (Miss. 1926); Webb v. Sardis, 143 Miss. 92, 108 So. 442, 1926 Miss. LEXIS 245 (Miss. 1926).

5. Variance between warrant and affidavit.

Warrant which did not conform to affidavit, nor authorize search of particular place described therein, void. Morton v. State, 136 Miss. 284, 101 So. 379, 1924 Miss. LEXIS 129 (Miss. 1924).

6. Who may issue warrant.

The mayor of the town of Louin by virtue of his office as police justice and as ex officio justice of the peace, had the power as an ex officio justice of the peace to issue the search warrant and it was not necessary in order to give validity to his act in issuing the search warrant that he add the title ex officio justice of peace to his official signature as mayor. Simmons v. Louin, 213 Miss. 482, 57 So. 2d 133, 1952 Miss. LEXIS 388 (Miss. 1952).

Issuance of a search warrant by a justice of the peace of one district of the county from another justice of the peace district of the county did not make the search warrant and subsequent conviction of unlawful possession of intoxicating liquor void, since such issuance of the search warrant was not a judicial act and was authorized. McGowan v. State, 189 Miss. 450, 196 So. 222, 1940 Miss. LEXIS 103 (Miss. 1940).

When a town is located partly in two counties, the county line running through the municipality, the mayor is nevertheless the mayor of the entire town and in consequence is an ex officio justice of the peace throughout the entire limits of the municipality, including that part in one county as well as the other; and being so, he is a justice of the peace ex officio of both counties and has authority, while acting within the municipality, to issue a search warrant authorizing a search for unlawful possession of intoxicating liquors to be executed in any part of either one of the two counties. Hathaway v. State, 188 Miss. 403, 195 So. 323, 1940 Miss. LEXIS 46 (Miss. 1940).

Mayor of city having police justice has no function as ex officio justice of peace, and affidavit taken and search warrant issued by him are void, and evidence obtained thereunder inadmissible. Palmer v. Lumberton, 153 Miss. 886, 122 So. 199, 1929 Miss. LEXIS 103 (Miss. 1929).

Justice of the peace may issue search warrant for execution in any part of the county; search warrant made returnable to issuing justice in district other than where search made does not render it void. Reynolds v. State, 136 Miss. 329, 101 So. 485, 1924 Miss. LEXIS 140 (Miss. 1924).

City clerk has no authority to issue search warrant. Porter v. State, 135 Miss. 789, 100 So. 377, 1924 Miss. LEXIS 70 (Miss. 1924).

Only magistrate before whom proper affidavit filed may issue search warrant. City of Jackson v. Howard, 135 Miss. 102, 99 So. 497, 1924 Miss. LEXIS 8 (Miss. 1924).

Any justice may issue search warrant for his county on proper affidavit. Bufkin v. State, 134 Miss. 1, 98 So. 452, 1923 Miss. LEXIS 238 (Miss. 1923).

Mayor may issue search warrant to be served outside city limits. Falkner v. State, 134 Miss. 101, 98 So. 345, 1923 Miss. LEXIS 236 (Miss. 1923).

7. Who may serve warrant.

The fact that a search warrant, directed to any lawful officer of the town of Louin, was delivered by the marshal to, and served by, the sheriff, did not make the service of the warrant upon defendant in a prosecution for unlawful possession of intoxicating liquor illegal, where the marshal was present when the sheriff delivered a copy of the search warrant to the defendant, and the marshal had a right to summon such aid as in his judgment was needed to execute the search warrant both by the terms of the statute and the warrant itself, and either of the officers could have made a valid return on the warrant. Simmons v. Louin, 213 Miss. 482, 57 So. 2d 133, 1952 Miss. LEXIS 388 (Miss. 1952).

Appointment by court during vacation of special officer to serve search warrant is void in absence of written application for appointment of special officer, search made thereunder is not warranted and evidence obtained by reason of such search is inadmissible. Claunch v. State, 208 Miss. 767, 45 So. 2d 581, 1950 Miss. LEXIS 295 (Miss. 1950).

Application for search warrant, whether under Code 1942, § 2604, or this section [Code 1942, § 2614], is not also an application for appointment of special officer to serve it under Code 1942, § 1877, since sections dealing with search warrants make no provision for prayer for appointment of special officer to serve same, all such process being directed to be addressed to lawful officer. Claunch v. State, 208 Miss. 767, 45 So. 2d 581, 1950 Miss. LEXIS 295 (Miss. 1950).

In determining when a coroner may lawfully execute a search warrant for the search and seizure of intoxicating liquor, statute (Code 1942, § 3906), prescribing occasions on which a coroner may perform the duties of a sheriff, must be read in connection with this section [Code 1942, § 2614]. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

Search warrant for the search and seizure of intoxicating liquor may properly be delivered to the coroner where the warrant is addressed to a sheriff who falls within any of the disqualifications and exceptions listed in Code 1942, § 3906, but in dealing with the writ the coroner performs the functions of the sheriff and not those of the coroner. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

Warrant directing search for and seizure of intoxicating liquor, issued merely to any lawful officer of the county, constitutes a legal search warrant, but the coroner, unless the sheriff is disqualified under Code 1942, § 3906, cannot lawfully serve it. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

Coroner, in serving, as directed, warrant for the search and seizure of intoxicating liquor while acting as coroner and in no other capacity and for no other reason except that he is coroner, usurps the duties and prerogatives of the sheriff. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

City policeman could serve within city warrant issued by justice of peace directed to any lawful officer of county, and evidence secured under such warrant is competent. Keys v. State, 155 Miss. 574, 124 So. 789, 1929 Miss. LEXIS 330 (Miss. 1929).

8. Return of service.

Liquor search warrant was not void and evidence was not inadmissible because officer's return was defective, since return was amendable. Banks v. Jackson, 152 Miss. 844, 120 So. 209, 1929 Miss. LEXIS 220 (Miss. 1929).

9. Execution of warrant.

While law enforcement officers by virtue of a search warrant for intoxicating liquor had a legal right to break into a house and make a search therein for intoxicating liquor even though the house was locked and no one at home, and were entitled to a reasonable time to make the search, they did not have a right to remain in the house in darkness from 10 o'clock until midnight. Smith v. State, 233 Miss. 503, 102 So. 2d 699, 1958 Miss. LEXIS 409 (Miss. 1958).

It is not necessary for an officer to search the entire premises for the owner and to ascertain first whether the owner is anywhere on the premises before he can properly serve a search warrant upon the person in possession of the premises, and the fact that the defendant might have been in the backyard unknown to the sheriff, does not vitiate the service. Brown v. State, 222 Miss. 863, 77 So. 2d 694, 1955 Miss. LEXIS 678 (Miss. 1955).

Code 1942, § 1859, applies to service of summons in civil actions and has no application to the service of search warrant under this section [Code 1942, § 2614] which provides that copy of search warrant shall be served on owner or person in possession of premises if such person is present or readily found. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Act of officers in leaving copy of search warrant on bed of owner of premises searched did not render search void when defendant was not present at time of search, as it was not necessary to serve copy of writ on anyone or to post copy on his door under this section [Code 1942, § 2614]. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Search warrant authorizes search of locked metal box or locker in outhouse in backyard of lot on which defendant's residence is situated when property to be searched, as described in both affidavit and warrant, includes residence and outhouses on premises. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Search warrant returnable instanter but not served until the next day after its date did not render process void. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

This section [Code 1942, § 2614] is the exclusive statute dealing with search warrants in intoxicating liquor crimes and service of process should be made in manner herein set out and not in any one of modes authorized by Code 1942, § 1859, for service of summons. Buxton v. State, 205 Miss. 692, 39 So. 2d 310, 1949 Miss. LEXIS 460 (Miss. 1949).

Search warrant on which search of premises has been made, evidence obtained, and defendant convicted, is functus officio; that is, it has fulfilled purpose of its creation and is of no further virtue or effect. Riley v. State, 204 Miss. 562, 37 So. 2d 768, 1948 Miss. LEXIS 389 (Miss. 1948).

That the sheriff failed to inform the defendant in a prosecution for transporting intoxicating liquor that he had a warrant before searching their automobile did not affect the admissibility of the evidence obtained by him thereunder. Carr v. State, 187 Miss. 535, 192 So. 569, 1940 Miss. LEXIS 201 (Miss. 1940).

Search of outhouses under warrant for search of specified building, invalid. Deaton v. State, 137 Miss. 164, 102 So. 175, 1924 Miss. LEXIS 213 (Miss. 1924).

Seizure of still under warrant to search premises for intoxicating liquors held unlawful. Reynolds v. State, 136 Miss. 329, 101 So. 485, 1924 Miss. LEXIS 140 (Miss. 1924).

Warrant for search of certain building held not to authorize search of yard. Fatimo v. State, 134 Miss. 175, 98 So. 537, 1924 Miss. LEXIS 249 (Miss. 1924).

Search of property not described in warrant unlawful. Vaughn v. State, 136 Miss. 314, 101 So. 439, 1924 Miss. LEXIS 137 (Miss. 1924); Butler v. State, 129 Miss. 778, 93 So. 3, 1922 Miss. LEXIS 88 (Miss. 1922); Owens v. State, 133 Miss. 753, 98 So. 233, 1923 Miss. LEXIS 188 (Miss. 1923).

Only room or building designated in search warrant may be searched. Strangi v. State, 134 Miss. 31, 98 So. 340, 1923 Miss. LEXIS 235 (Miss. 1923).

10. Search of person.

Finding of liquor in purse on rear seat of car, belonging to woman in car, by officer making search of automobile under search warrant does not authorize officer to arrest without warrant former passenger who has left car and entered his own place of business and subsequent search of passenger's person is unlawful. Kelly v. State, 43 So. 2d 383 (Miss. 1949).

Taking bag containing liquor from defendant's son about to leave premises being searched under proper warrant did not constitute an unlawful search of his person, making evidence obtained thereby inadmissible. West v. State, 42 So. 2d 751 (Miss. 1949).

Search of person before intoxicating liquor is found and lawful arrest made by officer based thereon is unauthorized. Robinson v. State, 143 Miss. 247, 108 So. 903, 1926 Miss. LEXIS 262 (Miss. 1926).

Arrest by officer and search of bag which he took from defendant's hand without search warrant was unlawful. Webb v. Sardis, 143 Miss. 92, 108 So. 442, 1926 Miss. LEXIS 245 (Miss. 1926).

Neither statute nor common law authorizes warrant for search of person, and evidence so secured is inadmissible against accused. Duckworth v. Taylorsville, 142 Miss. 440, 107 So. 666, 1926 Miss. LEXIS 105 (Miss. 1926).

Warrant to search person invalid, and liquor found on accused on search thereunder inadmissible. Comby v. State, 141 Miss. 561, 106 So. 827, 1926 Miss. LEXIS 465 (Miss. 1926).

Search without warrant of sack dropped by defendant while fleeing from arrest which policeman had no authority to make held unlawful. Butler v. State, 135 Miss. 885, 101 So. 193, 1924 Miss. LEXIS 87 (Miss. 1924).

11. Evidence procured by search.

Evidence obtained during a search under a warrant was inadmissible in a prosecution for unlawful possession of intoxicating liquor, where the warrant was issued upon an affidavit which stated that the affiant had information from reliable informants that an illegal whisky distillery was concealed on the defendant's property and that the whisky was being stored for purposes of sale, such affidavit not stating facts upon which the justice could judicially determine probable cause. Routh v. State, 230 So. 2d 562, 1970 Miss. LEXIS 1553 (Miss. 1970).

One not shown to have possession or control of the premises searched may not object to introduction of evidence obtained by an illegal search. Walker v. State, 237 Miss. 470, 115 So. 2d 159, 1959 Miss. LEXIS 492 (Miss. 1959).

In a proceeding to confiscate and sell automobile on the ground that the automobile was being used for transportation of whisky, the testimony of the sheriff that the person who gave him the information was not a credible person justified the trial court's conclusion that the sheriff did not have probable cause for seizing and searching the automobile without a warrant and the evidence obtained was not admissible. State use of Kemper County v.

Brown, 219 Miss. 383, 68 So. 2d 419, 1953 Miss. LEXIS 399 (Miss. 1953).

Evidence that officers, who had no search warrant, took defendant's suitcase off train after he had alighted, asked what was in it, and arrested defendant when he replied "whisky," then returned it to defendant who carried it to police station where sheriff told defendant to open suitcase and officers saw for first time that it contained whisky was illegally obtained and inadmissible in prosecution for unlawful possession of liquor. Harris v. State, 209 Miss. 183, 46 So. 2d 194, 1950 Miss. LEXIS 378 (Miss. 1950).

Conviction of unlawful possession of intoxicating liquor cannot be sustained when proof of fact arises out of evidence obtained in violation of defendant's constitutional rights to be secure in person, house and possession from unreasonable search and seizure. Kelly v. State, 43 So. 2d 383 (Miss. 1949).

Evidence of search of defendant's premises and finding parts of still was admissible notwithstanding affidavit and search warrant were lost where state made oral proof of that fact and of the substance of those documents before the trial judge. Jefferson v. State, 207 Miss. 576, 42 So. 2d 772, 1949 Miss. LEXIS 369 (Miss. 1949).

Evidence procured under search warrant issued pursuant to affidavit which was fatally defective for failure to recite that affiant was a "credible person" and that affiant "has reason to believe and does believe" etc., was inadmissible and search was unlawful. Laster v. Ard, 42 So. 2d 737 (Miss. 1949).

Conviction based on evidence obtained under a search warrant illegal because return day was left blank was reversed. Buxton v. State, 205 Miss. 692, 39 So. 2d 310, 1949 Miss. LEXIS 460 (Miss. 1949).

Evidence obtained by second search, under original search warrant, is inadmissible against defendant when second search is made after original search had been completed and evidence obtained, and after defendant was arrested, plead guilty and paid fine. Riley v. State, 204 Miss. 562, 37 So. 2d 768, 1948 Miss. LEXIS 389 (Miss. 1948).

Warrant issued by justice of the peace addressed and delivered to the coroner as such directing him to search for and seize intoxicating liquor although the sheriff suffered no disqualification within the purview of Code 1942, § 3906, and which was served, as directed, by the coroner while acting as such officer was illegal and evidence obtained under authority of the search warrant was inadmissible, notwithstanding that the warrant was also addressed to any lawful officer of the county. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

The failure of the state in a prosecution for transporting intoxicating liquor to introduce the affidavit and search warrant in evidence was waived, where no objection to the evidence was made. Carr v. State, 187 Miss. 535, 192 So. 569, 1940 Miss. LEXIS 201 (Miss. 1940).

Evidence secured by policeman under search warrant issued by justice directed to any lawful officer of county held competent. Keys v. State, 155 Miss. 574, 124 So. 789, 1929 Miss. LEXIS 330 (Miss. 1929).

Evidence obtained on search held admissible against wife of occupant named in affidavit and warrant. Cox v. State, 146 Miss. 685, 112 So. 479, 1927 Miss. LEXIS 252 (Miss. 1927).

Admission of evidence obtained by unlawful search held not prejudicial, where defendant made no specific objection nor motion to exclude testimony, but obtained instruction eliminating it from jury's consideration. Bailey v. State, 143 Miss. 210, 108 So. 497, 1926 Miss. LEXIS 257 (Miss. 1926).

Testimony obtained by search, without warrant, of bundle tied to saddle on horse, on mere suspicion of liquor being there, is inadmissible. Canteberry v. State, 142 Miss. 462, 107 So. 672, 1926 Miss. LEXIS 108 (Miss. 1926).

Wife may, on offer of evidence against her, complain of search of home rented or owned by husband on void warrant. Brewer v. State, 142 Miss. 100, 107 So. 376, 1926 Miss. LEXIS 73 (Miss. 1926).

Evidence secured on search of defendant's home on warrant against another held inadmissible, though legal title to land in his wife. Sanders v. State, 141 Miss. 615, 106 So. 822, 1926 Miss. LEXIS 460 (Miss. 1926).

Admission of evidence obtained by illegal search not rendered harmless by defendant's admission of one only of facts in testimony. Nicaise v. State, 141 Miss. 611, 106 So. 817, 1926 Miss. LEXIS 456 (Miss. 1926).

Officer arresting one for violation of prohibition laws without warrant, held competent witness; liquor seized by officer without warrant, on admission of accused that he had liquor, may be introduced in evidence. Nicaise v. State, 141 Miss. 611, 106 So. 817, 1926 Miss. LEXIS 456 (Miss. 1926).

Evidence obtained on search of defendant's residence, on search warrants against others, inadmissible against him. Harrell v. State, 140 Miss. 737, 106 So. 268, 1925 Miss. LEXIS 309 (Miss. 1925).

For evidence obtained by search without warrant to be inadmissible it must appear that such property was owned or was in possession of accused. Lovern v. State, 140 Miss. 635, 105 So. 759, 1925 Miss. LEXIS 299 (Miss. 1925).

Copies of lost search warrant and affidavit therefor admissible on defendant's demand for showing before admission of evidence obtained. Mitchell v. State, 139 Miss. 108, 103 So. 815, 1925 Miss. LEXIS 129 (Miss. 1925).

Affidavit and search warrant must be produced on demand or loss explained before evidence obtained by lawful search admissible. Wells v. State, 135 Miss. 764, 100 So. 674, 1924 Miss. LEXIS 82 (Miss. 1924); Nelson v. State, 137 Miss. 170, 102 So. 166, 1924 Miss. LEXIS 209 (Miss. 1924); Pickle v. State, 151 Miss. 549, 118 So. 625, 1928 Miss. LEXIS 368 (Miss. 1928).

Evidence procured by unlawful search or seizure is inadmissible. Tucker v. State, 128 Miss. 211, 90 So. 845, 1922 Miss. LEXIS 108 (Miss. 1922); Williams v. State, 129 Miss. 469, 92 So. 584, 1922 Miss. LEXIS 64 (Miss. 1922); Butler v. State, 129 Miss. 778, 93 So. 3, 1922 Miss. LEXIS 88 (Miss. 1922); State v. Patterson, 130 Miss. 680, 95 So. 96, 1922 Miss. LEXIS 260 (Miss. 1922); Smith v. State, 133 Miss. 730, 98 So. 344, 1923 Miss. LEXIS 195 (Miss. 1923); Owens v. State, 133 Miss. 753, 98 So. 233, 1923 Miss. LEXIS 188 (Miss. 1923); Strangi v. State, 134 Miss. 31, 98 So. 340, 1923 Miss. LEXIS 235 (Miss. 1923); Taylor v. State, 134 Miss. 110, 98 So. 459, 1924 Miss. LEXIS 245 (Miss. 1924); Rignall v. State, 134 Miss. 169, 98 So. 444, 1923 Miss. LEXIS 237 (Miss. 1923); Falkner v. State, 134 Miss. 253, 98 So. 691, 1924 Miss. LEXIS 259 (Miss. 1924); Spears v. State, 99 So. 361 (Miss. 1924); McCarthy v. Gulfport, 134 Miss. 632, 99 So. 501, 1924 Miss. LEXIS 315 (Miss. 1924); Cuevas v. Gulfport, 134 Miss. 644, 99 So. 503, 1924 Miss. LEXIS 316 (Miss. 1924); Matthews v. State, 134 Miss. 807, 100 So. 18, 1924 Miss. LEXIS 327 (Miss. 1924); Wells v. State, 135 Miss. 764, 100 So. 674, 1924 Miss. LEXIS 82 (Miss. 1924); Jordan v. State, 135 Miss. 785, 100 So. 384, 1924 Miss. LEXIS 75 (Miss. 1924); Butler v. State, 135 Miss. 885, 101 So. 193, 1924 Miss. LEXIS 87 (Miss. 1924); Morton v. State, 136 Miss. 284, 101 So. 379, 1924 Miss. LEXIS 129 (Miss. 1924); Vaughn v. State, 136 Miss. 314, 101 So. 439, 1924 Miss. LEXIS 137 (Miss. 1924); Reynolds v. State, 136 Miss. 329, 101 So. 485, 1924 Miss. LEXIS 140 (Miss. 1924); Robinson v. State, 136 Miss. 850, 101 So. 706, 1924 Miss. LEXIS 176 (Miss. 1924); Deaton v. State, 137 Miss. 164, 102 So. 175, 1924 Miss. LEXIS 213 (Miss. 1924); Borders v. State, 138 Miss. 788, 104 So. 145, 1925 Miss. LEXIS 99 (Miss. 1925); Orick v. State, 140 Miss. 184, 105 So. 465, 1925 Miss. LEXIS 250 (Miss. 1925); Harrell v. State, 140 Miss. 737, 106 So. 268, 1925 Miss. LEXIS 309 (Miss. 1925); Comby v. State, 141 Miss. 561, 106 So. 827, 1926 Miss. LEXIS 465 (Miss. 1926); Nicaise v. State, 141 Miss. 611, 106 So. 817, 1926 Miss. LEXIS 456 (Miss. 1926); Brewer v. State, 142 Miss. 100, 107 So. 376, 1926 Miss. LEXIS 73 (Miss. 1926); Duckworth v. Taylorsville, 142 Miss. 440, 107 So. 666, 1926 Miss. LEXIS 105 (Miss. 1926); Canteberry v. State, 142 Miss. 462, 107 So. 672, 1926 Miss. LEXIS 108 (Miss. 1926); Buxton v. State, 205 Miss. 692, 39 So. 2d 310, 1949 Miss. LEXIS 460 (Miss. 1949); Haney v. State, 43 So. 2d 383 (Miss. 1949); Kelly v. State, 43 So. 2d 383 (Miss. 1949).

12. Miscellaneous.

Defendant appealing from conviction may not raise a question where there was a valid search warrant, for the reason that the officers did not enter upon or search the premises belonging to the defendant. Miles v. State, 51 So. 2d 214 (Miss. 1951).

Officer was authorized to arrest defendant for unlawful possession of liquor without warrant only if misdemeanor was being knowingly committed in his presence. Kelly v. State, 43 So. 2d 383 (Miss. 1949).

Trial and conviction of accused for unlawful possession of intoxicating liquor in the circuit court on an indictment was valid, and fact that the intoxicating liquor in question was found and seized in accused's home under a search warrant issued to the sheriff by a justice of the peace did not place jurisdiction in the justice's court to the exclusion of the circuit court where no affidavit was made before the justice of the peace charging her with unlawful possession of intoxicants, since a charging affidavit is essential to jurisdiction in the justice of the peace court. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

The affidavit for a search warrant is not, and cannot be, a substitute for the affidavit charging the offense of unlawful possession of intoxicating liquor so as to give a justice court jurisdiction of the offense. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

Officer may arrest without warrant person committing felony not in his presence or on reasonable grounds amounting to probable cause to believe that person has committed felony. Kennedy v. State, 139 Miss. 579, 104 So. 449, 1925 Miss. LEXIS 175 (Miss. 1925).

Sheriff informed by credible witness of presence of still may go on premises without warrant to seize it; sheriff informed by credible witness of presence of still may go on premises without warrant to arrest person possessing it. Kennedy v. State, 139 Miss. 579, 104 So. 449, 1925 Miss. LEXIS 175 (Miss. 1925).

Neither the affidavit for search warrant, nor the warrant, is evidence of venue. Sandifer v. State, 136 Miss. 836, 101 So. 862, 1924 Miss. LEXIS 190 (Miss. 1924).

Defendant held not to have invited search without valid search warrant. Morton v. State, 136 Miss. 284, 101 So. 379, 1924 Miss. LEXIS 129 (Miss. 1924).

Requirement of search warrant held not waived. Smith v. State, 133 Miss. 730, 98 So. 344, 1923 Miss. LEXIS 195 (Miss. 1923).

City marshal presumed to know search and seizure law. United States Fidelity & Guaranty Co. v. State, 121 Miss. 369, 83 So. 610, 1919 Miss. LEXIS 171 (Miss. 1919).

RESEARCH REFERENCES

ALR.

Disputation of truth of matters stated in affidavit in support of search warrant–modern cases. 24 A.L.R.4th 1266.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 380 et seq.

CJS.

48 C.J.S., Intoxicating Liquors §§ 692, 693, 709 et seq.

§ 99-27-17. Affidavit for search warrant; form.

The form of affidavit may be as follows:

Affidavit for search warrant.

"State of Mississippi,
________ County.

This day personally appeared before me, the undersigned officer of said county, ________ of said county, who is known to be a credible person, who upon his oath says that he has reason to believe, and does believe, that intoxicating liquor is being (strike out any of the following not to be sworn to):

(1) Stored, kept, owned, controlled or possessed for purposes of sale in violation of law,

(2) Sold or offered for sale in violation of law,

(3) Manufactured or distilled, in violation of law,

(4) Attempted to be manufactured or distilled in violation of law,

(5) Attempted to be transported in violation of law, in the residence, outhouses, barns, stalls, smokehouses, crib, and in the field, yard, and garden and woods near the residence of ________ in the ________ district of said ________ County, Mississippi, and on Section ________ Township ________, Range ________ in said ________ County, Mississippi, and more particularly described as follows:

____
____
____

in violation of the laws of the state of Mississippi.

And that intoxicating liquor is being transported and attempted to be transported in a wagon, cart, automobile, or other vehicle along the public road in said county known as ________ public road, in violation of the laws of said state of Mississippi. And this belief is not feigned of malice against ________ who is believed to be guilty of said violations, but is founded on credible information.

Wherefore, affiant prays a search warrant directing a search of the above mentioned places and things, and seizure of the intoxicating liquor, stills, or integral parts thereof, and of the vehicles and receptacles used and employed in the concealment and transportation thereof, and the arrest of the said ________ and any other person or persons in charge, possession or control, guilty of violating the prohibition laws of the state.

________________ Affiant.

Sworn to and subscribed before me, the ________ day of ________ 2______.

____
(Official title)"

HISTORY: Codes, 1930, § 1977; 1942, § 2616; Laws, 1924, ch. 244.

Cross References — Seizure of alcoholic beverages and other related personal property subject to forfeiture for unlawful possession thereof, see §§ 67-1-17, 67-1-18.

Affidavit to obtain search warrant generally, see § 99-25-15.
Contents of search warrant, see § 99-27-15.
Form of search warrant, see § 99-27-19.

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors §§ 380 et seq.
5 Am. Jur. Trials 331, Excluding Illegally Obtained Evidence §§ 1 et seq.

CJS.
48 C.J.S., Intoxicating Liquors §§ 692, 693, 709 et seq.

§ 99-27-19. Search warrant; form.

The form of search warrant may be as follows:

Search Warrant.

"State of Mississippi,
________ County.
To any lawful officer of ________ County:

Whereas, ________ has this day made complaint on oath, before the undersigned officer in and for said county, that he has reason to believe, and does believe, that intoxicating liquor is being (strike out any of the following not sworn to):

(1) Stored, kept, owned, controlled or possessed for purposes of sale in violation of law
(2) Sold or offered for sale in violation of law
(3) Manufactured or distilled in violation of law
(4) Attempted to be manufactured or distilled in violation of law
(5) Attempted to be transported in violation of law in the residence, outhouses, barns, stalls, smokehouses, crib, and in the yard and garden, and in the field and woods near the residence of ________ in the ________ district of said ________ County and on Section ________ Township ________ Range ________ in said county, and more particularly described as follows:

____

____

violation of the laws of the state of Mississippi;

And that intoxicating liquor is being transported and attempted to be transported in a wagon, cart, automobile or other vehicle along the public road in said county known as the ________ public road, in violation of the laws of the state of Mississippi. And that ________ is suspected of being guilty of said violations in said county and state. And the undersigned having examined and considered said affidavit, and also after having heard and considered evidence in support thereof, doth find that probable cause for the issuance of a search warrant in the premises doth exist;

Wherefore, we command you that with such aid as in your judgment shall be needed, you do proceed in the day, or nighttime, to enter by breaking, if necessary, and to diligently search said above described places, or any of them, or said described vehicles and automobiles, in said county and state, for said intoxicating liquor, stills, and integral parts thereof, vehicles and receptacles and appliances as are used in connection therewith, making known to the person or persons in control thereof, if any, your authority for so doing, and if any intoxicating liquor, stills, or still, or integral part or parts thereof, vehicles, vessels, receptacles, as are used in connection therewith be found, that you seize same, and if practicable, that you bring them before me at my office instanter, and also arrest the said ______ and all other persons as may be in possession or control thereof, and bring them before me, and have then and there this writ, with your proceedings noted thereon. Herein fail not.

Witness my hand, this the ______ day of ______, 2_____.

____

(Official title)"

HISTORY: Codes, 1930, § 1978; 1942, § 2617; Laws, 1924, ch. 244.

Cross References — Seizure of alcoholic beverages and other related personal property subject to forfeiture for unlawful possession thereof, see §§ 67-1-17, 67-1-18.

Search warrant and capias generally, see § 99-25-17.

Contents of search warrant, see § 99-27-15.

Form of affidavit for search warrant, see § 99-27-17.

JUDICIAL DECISIONS

1. In general.

Statute prescribing form of search warrant held not to violate Const. 1890, § 169. Mai v. State, 152 Miss. 225, 119 So. 177, 1928 Miss. LEXIS 247 (Miss. 1928), overruled, O'Bean v. State, 184 So. 2d 635, 1966 Miss. LEXIS 1478 (Miss. 1966).

RESEARCH REFERENCES

Am. Jur.

5 Am. Jur. Trials 331, Excluding Illegally Obtained Evidence §§ 1 et seq.

§ 99-27-21. Search of motor vehicles, etc. and seizure of liquor without warrant.

It shall be the duty of any sheriff or constable of a county, or any sheriff, constable or marshal, or policeman in a municipality who has reason to believe and does believe that intoxicating liquor is being transported in violation of law, in any wagon, cart, buggy, automobile, motorcycle, motor truck, water or air craft, or any other vehicle, forthwith to make a reasonable search of such vehicle and to seize any intoxicating liquor so found being transported or being attempted to be transported in violation of law and at once to arrest the person or persons in possession or control thereof and transporting or attempting to transport same in violation of law; and such officer or officers proceeding in good faith shall not be liable either civilly or criminally for such a search and seizure without a warrant, so long as said search and seizure is conducted in a reasonable manner, it appearing that the officer or officers had reason to believe and did believe that the prohibition laws of the State of Mississippi were being violated at the time such search was instituted. And the officers making such search shall be a competent witness, or witnesses, to testify as to all facts ascertained, and discoveries made, by means of said reasonable search, and all liquor, and all appliances for its manufacture or transportation, so seized shall be admitted in evidence. But this section shall not authorize the search of a residence or home or room or building or the premises belonging to or in the possession lawfully of the party suspected, without a search warrant.

HISTORY: Codes, 1930, § 1976; 1942, § 2615; Laws, 1924, ch. 244.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Intoxicating beverage offenses, see §§ 97-31-5 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Probable cause; reasonableness of search.

1. In general.

This section [Code 1942, § 2615] relative to the search of automobiles, as well as all other provisions relative to search and seizure, is construed strictly against the state. Stafford v. State, 193 So. 2d 119, 1966 Miss. LEXIS 1272 (Miss. 1966).

An arrest begins when the officer begins his pursuit for the purpose of making it, and if he does not have the authority to make an arrest for possession of whisky at the instant he begins his pursuit of an automobile for that purpose, the fact that the person the officer is pursuing violates a traffic law in making his escape does not thereby authorize the arrest which began unlawfully. Terry v. State, 252 Miss. 479, 173 So. 2d 889, 1965 Miss. LEXIS 1123 (Miss. 1965), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

A search of an automobile following an illegal arrest of the driver is not legal. Smith v. State, 240 Miss. 738, 128 So. 2d 857, 1961 Miss. LEXIS 505 (Miss. 1961).

In prosecution for unlawful transportation of intoxicating liquor, evidence of finding whisky on premises of third person after sheriff saw the accused place the whisky there, was not incompetent because the sheriff had no warrant, since one who has no interest in the premises is not in position to invoke objection to the officers going thereon. Harris v. State, 216 Miss. 895, 63 So. 2d 396, 1953 Miss. LEXIS 712 (Miss. 1953), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Search of defendant's parked automobile and seizure of quantity of whisky found therein were unlawful where such search and seizure took place after officers, armed with warrant to search defendant's premises for stolen money and other chattels, failed to find anything, there being no evidence or information that the automobile was used for the transportation of liquor; and order of sale of such automobile pursuant to Code 1942, § 2618, constituted reversible error. Brooks v. Wynn, 209 Miss. 156, 46 So. 2d 97, 1950 Miss. LEXIS 374 (Miss. 1950).

It is not necessary that an automobile must be actually moving when intercepted on the highway in order to authorize a search under this section [Code 1942, § 2615]; it may be searched on probable cause for so doing if it is driven off the traveled portion of the highway for any purpose while the same is en route to the place to which the intoxicating liquors are being transported and when its continuous travel along the highway has been temporarily interrupted, whether the automobile is at the time actually on the highway or has departed therefrom to avoid a search, or for some other temporary purpose. Boyd v. State, 206 Miss. 573, 40 So. 2d 303, 1949 Miss. LEXIS 285 (Miss. 1949).

This section [Code 1942, § 2615] does not authorize an officer to invade the private premises of a defendant without a search warrant and search an automobile in his garage after the same has come to rest at the completion of the journey during which intoxicating liquors had been unlawfully transported. Boyd v. State, 206 Miss. 573, 40 So. 2d 303, 1949 Miss. LEXIS 285 (Miss. 1949).

Provisions for search and seizure are construed strictly against the state. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

The right to make a search for intoxicating liquors on probable cause and without a search warrant is applicable only to the search of an automobile and the other means of transportation mentioned in the statute. Martin v. State, 190 Miss. 898, 2 So. 2d 143, 1941 Miss. LEXIS 104 (Miss. 1941); Harris v. State, 209 Miss. 183, 46 So. 2d 194, 1950 Miss. LEXIS 378 (Miss. 1950).

Accordingly, where police officer, suspecting illegal sale of beer in the back room of a restaurant, upon being refused admittance thereto, took up his position on the back porch, not for the purpose of making an arrest, but for the purpose of ascertaining whether a misdemeanor would be committed in his presence, such officer was a trespasser and information as to the illegal sale of beer gained there was illegally obtained and was inadmissible in evidence. Martin v. State, 190 Miss. 898, 2 So. 2d 143, 1941 Miss. LEXIS 104 (Miss. 1941).

Instruction that officers making joint search without warrant were each liable for acts of other held not erroneous. Sellers v. Lofton, 149 Miss. 849, 116 So. 104, 1928 Miss. LEXIS 96 (Miss. 1928).

2. Probable cause; reasonableness of search.

Even though the movement violated no law with reference to intoxicating liquor until the defendant transported it into a dry county, there was probable cause to make a search of his truck without a warrant, where police officers observed the defendant loading whiskey into his pick-up truck at a liquor store and continued their surveillance of the vehicle until an enforcement agent of the alcohol beverage control board took over and followed the vehicle across the county line where he stopped the truck and observed whiskey cases in open view. State v. Thrash, 257 So. 2d 523, 1972 Miss. LEXIS 1464 (Miss. 1972).

The information upon which an arresting officer bases his belief that an automobile is being used for the transportation of intoxicating liquor must be of such nature that it would authorize a judicial finding that a search warrant could be issued if the same had been applied for upon affidavit of the officer. Stafford v. State, 193 So. 2d 119, 1966 Miss. LEXIS 1272 (Miss. 1966).

Information given to a county attorney that something was going on down at a cafe and that a 1959 automobile was supposed to be involved in illegal traffic cannot justify his stopping a 1956 automobile, and, upon observing intoxicating liquor therein, arresting the driver. Stafford v. State, 193 So. 2d 119, 1966 Miss. LEXIS 1272 (Miss. 1966).

Where a defendant is arrested for the possession of intoxicating liquors transported by him, following a search and seizure without a warrant, his counsel is entitled to know who gave the information that he would be transporting the liquors in a particular automobile at a particular place and time, together with a full disclosure of all of the facts upon which the officer acted, in order that the issue may be presented of whether there was probable cause. Terry v. State, 252 Miss. 479, 173 So. 2d 889, 1965 Miss. LEXIS 1123 (Miss. 1965), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Information obtained from an anonymous telephone informer that the defendant would be transporting whisky in a certain automobile at a certain place and time does not constitute probable cause for the search of the defendant's automobile and the seizure of liquor found there.

Terry v. State, 252 Miss. 479, 173 So. 2d 889, 1965 Miss. LEXIS 1123 (Miss. 1965), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Where an officer's primary purpose in stopping a motorist was not to inspect his license but to search the vehicle without a warrant, and there was no probable cause to arrest the motorist and no misdemeanor was being committed in the officer's presence, and after motorist had been detained three hours his car was searched revealing the presence of intoxicating liquors, the search was unlawful and would not support a conviction. Coston v. State, 252 Miss. 257, 172 So. 2d 764, 1965 Miss. LEXIS 1097 (Miss. 1965).

The uncorroborated statement of an officer that he had probable cause for searching a vehicle is insufficient to establish the fact. Barnes v. State, 249 Miss. 482, 162 So. 2d 865, 1964 Miss. LEXIS 409 (Miss. 1964).

Search and seizure of a motor vehicle may be made without a warrant if the information upon which the seizing officer acts is given him by a credible person. State use of Kemper County v. Brown, 219 Miss. 383, 68 So. 2d 419, 1953 Miss. LEXIS 399 (Miss. 1953).

In a proceeding to confiscate and sell automobile on the ground that the automobile was being used for transportation of whisky, the testimony of the sheriff that the person who gave him the information was not a credible person justified the trial court's conclusion that the sheriff did not have probable cause for seizing and searching the automobile without a warrant and the evidence obtained was not admissible. State use of Kemper County v. Brown, 219 Miss. 383, 68 So. 2d 419, 1953 Miss. LEXIS 399 (Miss. 1953).

A highway patrolman who began his pursuit of a motorist at a time when he had no reason to believe that the motorist had violated any law was not authorized either to begin the chase or to search the automobile for intoxicating liquors without a search warrant. Gause v. State, 203 Miss. 377, 34 So. 2d 729, 1948 Miss. LEXIS 282 (Miss. 1948).

Where highway patrolman pursued motorist to check his driver's license, stopped latter's automobile, and thereafter searched it without a warrant and without reason to believe that motorist had violated any laws, and motorist had committed no misdemeanor in the patrolman's presence, evidence that patrolman found whiskey in the automobile was illegally obtained and therefore inadmissible in a prosecution for unlawful possession of intoxicating liquor. Gause v. State, 203 Miss. 377, 34 So. 2d 729, 1948 Miss. LEXIS 282 (Miss. 1948).

Owner of automobile in which liquor was discovered was entitled to have sheriff disclose information claimed to authorize search without warrant. Perry v. State, 154 Miss. 212, 122 So. 398, 1929 Miss. LEXIS 128 (Miss. 1929).

Excluding testimony of witness denying having given information to sheriff to justify search of automobile without warrant held erroneous. Perry v. State, 154 Miss. 212, 122 So. 398, 1929 Miss. LEXIS 128 (Miss. 1929).

That officer not disclosing informants' names was informed defendant was handling whisky did not show probable cause for search without warrant. Ford v. Jackson, 153 Miss. 616, 121 So. 278, 1929 Miss. LEXIS 63 (Miss. 1929), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

That defendant threw whisky out of automobile, when officers were pursuing him to search automobile, did not justify search without warrant. Ford v. Jackson, 153 Miss. 616, 121 So. 278, 1929 Miss. LEXIS 63 (Miss. 1929), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Town marshal, smelling whisky on breath of occupant of automobile and seeing whisky in car, had probable cause for search without warrant. Arnold v. State, 153 Miss. 299, 120 So. 731, 1929 Miss. LEXIS 17 (Miss. 1929).

Officer searching vehicle for liquor without warrant must reveal name of informant as bearing on probable cause. Hill v. State, 151 Miss. 518, 118 So. 539, 1928 Miss. LEXIS 350 (Miss. 1928).

A case holding no probable cause for search without warrant. King v. State, 151 Miss. 580, 118 So. 413, 1928 Miss. LEXIS 332 (Miss. 1928).

Refusal to require sheriff to give source of information on which he based alleged probable cause for searching defendant's automobile without warrant held error. Perry v. State, 150 Miss. 293, 116 So. 430, 1928 Miss. LEXIS 110 (Miss. 1928), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Officer making search without warrant must before search is begun have reason to believe, and must believe, law was being violated. Sellers v. Lofton, 149 Miss. 849, 116 So. 104, 1928 Miss. LEXIS 96 (Miss. 1928).

Officers' search of automobile for intoxicating liquor without warrant on ground occupants were driving late and laughing and talking loud held without probable cause. Sellers v. Lofton, 149 Miss. 849, 116 So. 104, 1928 Miss. LEXIS 96 (Miss. 1928).

Search of vehicle without warrant is lawful in case of probable cause or belief that liquor is being transported. Hamilton v. State, 149 Miss. 251, 115 So. 427, 1928 Miss. LEXIS 33 (Miss. 1928), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

"Probable cause" authorizing search of vehicle for liquor without warrant must constitute more than mere belief on part of officer. Hamilton v. State, 149 Miss. 251, 115 So. 427, 1928 Miss. LEXIS 33 (Miss. 1928), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Discovery that some one in car had drunk liquors held not probable cause, authorizing its search. Chrestman v. State, 148 Miss. 673, 114 So. 748, 1927 Miss. LEXIS 77 (Miss. 1927).

Information given 90 days before, held not reason to believe liquor in car and so to justify search without warrant. Gardner v. State, 145 Miss. 210, 110 So. 588, 1926 Miss. LEXIS 25 (Miss. 1926).

Officer undertaking to search automobile without warrant is not final judge of probable cause or sufficiency of information on which he acts; whether officer searching automobile without warrant has probable cause or sufficient information is question for decision of court, when evidence so obtained is offered at trial; facts on which officer searching automobile without warrant acts must be sufficient in law to constitute probable cause. McNutt v. State, 143 Miss. 347, 108 So. 721, 1926 Miss. LEXIS 271 (Miss. 1926), overruled, Strode v. State, 231 So. 2d 779, 1970 Miss. LEXIS 1605 (Miss. 1970).

Person replying to question, before arrest or search, that kegs in automobile contained whisky, may be arrested without warrant; officer arresting automobilist, who replied, before arrest or search that he had whisky in kegs in automobile, may seize intoxicating liquor without warrant. Williamson v. State, 140 Miss. 841, 105 So. 479, 1925 Miss. LEXIS 314 (Miss. 1925).

Search of automobile or boat for intoxicating liquor without warrant is not unreasonable. Moore v. State, 138 Miss. 116, 103 So. 483, 1925 Miss. LEXIS 105 (Miss. 1925).

Belief, based on information by credible person, that intoxicating liquor is being transported in automobile, is sufficient to justify search without warrant. Moore v. State, 138 Miss. 116, 103 So. 483, 1925 Miss. LEXIS 105 (Miss. 1925).

RESEARCH REFERENCES

ALR.

What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest. 74 A.L.R.3d 1138.

Search and seizure: what constitutes abandonment of personal property within rule that search and seizure of abandoned property is not unreasonable–modern cases. 40 A.L.R.4th 381.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors §§ 395, 400 et seq.

18 Am. Jur. Proof of Facts 2d 681, Third Party's Lack of Authority to Consent to Search of Premises or Effects.

§ 99-27-23. Clubs, boats, places where liquor found may be abated as nuisance.

Except as authorized in Section 67-1-51(1), any club, vessel or boat, place or room where liquors are found, kept or possessed on any boat or vessel used in any of the waters of this state in conveying any intoxicating liquors or any person with intoxicating liquor in their possession or under their control into or in this state shall be deemed to be a common nuisance and may be abated by writ of injunction issued out of a court of equity upon a bill filed in the name of the state by the attorney general or any district or county attorney whose duty requires him to prosecute criminal cases on behalf of the state, in the county where the nuisance is maintained, or by any citizen or citizens of such county, such bill to be filed in the county in which the nuisance exists. And all rules of evidence and the practice and procedure that pertain to courts of equity generally in this state may be invoked and applied in any injunction procedure hereunder. Upon the abatement of any such place as a nuisance the person found to be the possessor or owner of such liquor may be required by the court to enter into a good and sufficient bond in such amount as may be deemed proper by the court, to be conditioned that the obligor therein will not violate any of the prohibition laws of the State of Mississippi for a period not to exceed two years from the date thereof. The failure to make such bond shall be a contempt of court and for such contempt the person or party shall be confined in the county jail until such bond is made, but not longer than two years. Said bond shall be approved by the clerk of the court where the proceedings were had and shall be filed as a part of the record of such case.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163h; 1930, § 2007; 1942, § 2646; Laws, 1918, ch. 189; Laws, 1938, ch. 349; Laws, 2018, ch. 382, § 2, eff from and after July 1, 2018.

Cross References — Attorney general generally, see §§ 7-5-1 et seq.

Duties of district attorney generally, see § 25-31-11.

Clubs, boats, and the like, operating gambling establishments as nuisances, see § 95-3-25.

Clubs not being permitted to have any interest in gaming, see § 97-33-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity.
3. Parties.
4. Use of property for legitimate purposes.
5. Evidence.

6. Self-incrimination.
7. Temporary injunction.
8. Decrees.
9. Contempt proceedings.
10. Limitation of actions.

1. In general.

Purpose of this section [Code 1942, § 2646], providing that a place which is a common nuisance may be abated by an injunction, can only be accomplished by an injunction against the person or persons, who may be ascertained and adjudged to be responsible for that nuisance but the injunction does not issue to suppress a business as such. Vermillion v. State, 210 Miss. 255, 49 So. 2d 401, 1950 Miss. LEXIS 345 (Miss. 1950).

Since preparations containing alcohol in large quantities, which are sold for beverage purposes, constitute "vinous or spiritous liquors," a suit to recover for the sale of intoxicating liquor, particularly alcohol for beverage purposes, and to suppress the place of business as a nuisance would more properly be brought under the sections of the statute particularly relating thereto, than under a section authorizing the bringing of a suit to abate by injunction a place where liquor was alleged to have been sold. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

This statute is not in pari materia with Code 1930, § 2875 [Code 1942, § 1067] vesting the chancery court with power to abate prostitution and similar nuisances, and to prohibit use of real property for any purpose whatever for one year. Pigford v. State, 184 Miss. 194, 183 So. 259, 1938 Miss. LEXIS 303 (Miss. 1938).

2. Validity.

The statutes which give the state a power to enjoin operation of gaming devices and also give the state power to abate by injunction the sale of liquor are not invalid and unconstitutional because they constitute an attempt to confer upon the chancery court criminal jurisdiction. Brooks v. State, 219 Miss. 262, 68 So. 2d 461, 1953 Miss. LEXIS 387 (Miss. 1953).

Statutes which give the state power to enjoin the operation of gaming devices and which also give the state power to abate by injunction the sale of liquor, are not unconstitutional because they deny due process of law in that the defendants are denied the right of trial by jury. Brooks v. State, 219 Miss. 262, 68 So. 2d 461, 1953 Miss. LEXIS 387 (Miss. 1953).

This statute is a constitutional exercise of legislative prerogative, at least insofar as authorizes the abatement of any place as a nuisance and the issuance of injunction against its maintenance. Murphy v. State, 202 Miss. 890, 32 So. 2d 875, 1947 Miss. LEXIS 352 (Miss. 1947).

3. Parties.

That county officers profess ability to control the liquor situation does not render it improper to hear petitions for abatement of alleged liquor nuisances. State ex rel. Dist. Attorney v. Eady, 246 Miss. 694, 151 So. 2d 917, 1963 Miss. LEXIS 494 (Miss. 1963).

It is not enough under this section [Code 1942, § 2646] that the nuisance therein defined be found and adjudged to exist, the identity of the person or persons responsible for the nuisance must also be ascertained and adjudicated and to the end, as the statute provides, that the nuisance so found to exist may be abated by a writ of injunction against the party or parties responsible therefor. Vermillion v. State, 210 Miss. 255, 49 So. 2d 401, 1950 Miss. LEXIS 345 (Miss. 1950).

A district attorney was not authorized to bring suit to recover the tax imposed for selling intoxicating liquors for beverage purposes or a suit to suppress as a nuisance a place of business at which alcohol was alleged to have been kept and sold for such purposes, although he would be authorized to sue in proper cases to abate by injunction as a common nuisance a place where intoxicating liquors were found, kept, or possessed. The action should have been brought by the state tax collector, or any sheriff or taxpayer of the county. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

The state tax collector is not authorized to bring suit under this section [Code 1942, § 2646]. Sullivan v. Gully, 187 Miss. 134, 192 So. 568, 1940 Miss. LEXIS 200 (Miss. 1940).

A joint suit in equity by the state tax collector and a county district attorney to collect monetary penalties for the sale of intoxicating liquors at defendant's place of business and to abate such place as a nuisance was improper as constituting a misjoinder of parties and of causes of action; and the court below erred in not entering an order in response to a special demurrer and a separate bill, but without a new contest, should be filed by the state tax collector. Sullivan v. Gully, 187 Miss. 134, 192 So. 568, 1940 Miss. LEXIS 200 (Miss. 1940).

Under this section [Code 1942, § 2646] the state tax collector is by necessary inference excluded from bringing an action to abate as a common nuisance a place where intoxicating liquors are kept or possessed. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

This section [Code 1942, § 2646] expressly authorizes institution of proceedings for abatement of a nuisance by private citizens. Caravella v. State, 185 Miss. 1, 186 So. 653, 1939 Miss. LEXIS 118 (Miss. 1939).

4. Use of property for legitimate purposes.

Temporary injunction against liquor nuisance was not void because premises described consisted of 50 acres of land through which a highway ran. Smith v. State, 245 Miss. 418, 146 So. 2d 73, 1962 Miss. LEXIS 562 (Miss. 1962).

In a padlock proceeding where it appeared that the defendants could have conducted an illegal liquor business in the building as outside the building, the chancellor was not justified in padlocking the building and depriving defendant of the use thereof for legitimate purposes. Whittington v. State, 222 Miss. 94, 75 So. 2d 272, 1954 Miss. LEXIS 625 (Miss. 1954).

In an action under this section [Code 1942, § 2646] to abate as a common nuisance a garage in which intoxicating liquors were allegedly kept, where defendant testified that he carried on automobile repair work on the premises and sold gasoline and automobile accessories, it was error for the trial court to find that the defendant was not conducting a lawful business on the premises and also it was error to close the garage as a common nuisance. Newman v. State, 221 Miss. 331, 72 So. 2d 700, 1954 Miss. LEXIS 542 (Miss. 1954).

While proof that intoxicating liquors were concealed in a secret cache in defendants' house warrants abatement of defendants' business of unlawfully keeping for sale and selling intoxicating liquors, the decree in depriving the owners of the structure of the use thereof for lawful purposes for the space of a year was beyond the power of the chancery court and should be modified to permit the owner to use the building for legitimate purposes. Pigford v. State, 184 Miss. 194, 183 So. 259, 1938 Miss. LEXIS 303 (Miss. 1938).

5. Evidence.

Only a preponderance of evidence is required in a suit to abate a liquor nuisance. Thornhill v. State, 234 Miss. 48, 105 So. 2d 161, 1958 Miss. LEXIS 459 (Miss. 1958); Turnage v. State, 234 Miss. 68, 105 So. 2d 483, 1958 Miss. LEXIS 463 (Miss. 1958).

Evidence of use of the property to violate liquor laws subsequently to filing of the complaint, and of the reputation of defendants and property with respect to liquor law violations, is admissible. Lee v. State, 234 Miss. 21, 105 So. 2d 346, 1958 Miss. LEXIS 456 (Miss. 1958).

In a suit to enjoin the defendant against having possession of any intoxicating liquor on the premises which he was operating as a grocery store, wherein it was alleged that the defendant had entered a plea of guilty to illegal possession of intoxicating liquor and paid a fine therefor, testimony of other alleged instances thereafter of intoxicating liquors being possessed or sold off the premises should have been excluded as incompetent, upon objection. Everett v. State, 232 Miss. 816, 100 So. 2d 583, 1958 Miss. LEXIS 335 (Miss. 1958).

Evidence that, although defendant's grocery business had been raided by police officers as many as thirty times, the only instances of finding intoxicating liquor thereon was when the officers found one can of beer in the defendant's icebox, and on another occasion when they found two pints of whisky in a pocket of a coat belonging to the defendant was not sufficient to support a finding that the defendant was actually maintaining a common nuisance at his place of business. Everett v. State, 232 Miss. 816, 100 So. 2d 583, 1958 Miss. LEXIS 335 (Miss. 1958).

A decree abating the nuisances of selling intoxicating liquor and carrying on gambling on certain premises, and providing for the condemnation and sale of personal property used in connection with the operation of such nuisances, was not erroneous because the court decided the case on final hearing on proof submitted on the hearing for a temporary injunction alone where there was no request on the part of the appellants that they might present any additional evidence or demand for a further hearing with the showing that other and additional evidence was desired to be offered. Caravella v. State, 185 Miss. 1, 186 So. 653, 1939 Miss. LEXIS 118 (Miss. 1939).

Evidence procured under search warrant issued by justice of peace and executed by officer of militia held admissible in prosecution to abate liquor nuisance. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

In proceeding to abate a liquor nuisance, evidence of reputation of defendant's place of business as place where liquor was stored and sold was admissible, where it was shown that defendant was in possession of liquor at one time when search was made and pleaded guilty to liquor charge, that liquor was found near building on subsequent searches, and that defendant was convicted of having possession thereof and paid fine. State ex rel. District Attorney v. Ingram, 179 Miss. 485, 176 So. 392, 1937 Miss. LEXIS 58 (Miss. 1937).

In proceeding to abate liquor nuisance, it is not necessary to show that liquor was found in building, where proof shows that liquor law was being violated at place in question, that liquor was kept accessible to such place, and that place was generally regarded as place where liquor could be had. State ex rel. District Attorney v. Ingram, 179 Miss. 485, 176 So. 392, 1937 Miss. LEXIS 58 (Miss. 1937).

In proceeding to abate liquor nuisance, evidence liquor was sold and prostitution carried on at defendant's place held to show that defendant's place constituted a nuisance subject to abatement. State ex rel. District Attorney v. Ingram, 179 Miss. 485, 176 So. 392, 1937 Miss. LEXIS 58 (Miss. 1937).

In proceeding by state, on the relation of district attorney, to abate liquor nuisance, evidence that defendant's place of business had general reputation of being one where intoxicating liquors were kept for use and sale held competent, where it was secondary and supplementary. State ex rel. District Attorney v. White, 178 Miss. 542, 173 So. 456, 1937 Miss. LEXIS 232 (Miss. 1937).

Proceeding by state, on the relation of district attorney, to abate liquor being a civil cause, defendant could have taken depositions of any witnesses outside state who would support defendant's testimony. State ex rel. District Attorney v. White, 178 Miss. 542, 173 So. 456, 1937 Miss. LEXIS 232 (Miss. 1937).

In proceeding to abate liquor nuisance, decree dismissing bill on ground that evidence was insufficient to sustain it held against great preponderance of evidence. State ex rel. District Attorney v. White, 178 Miss. 542, 173 So. 456, 1937 Miss. LEXIS 232 (Miss. 1937).

6. Self-incrimination.

In a suit in chancery on relation of district attorney to enjoin defendants from selling intoxicating liquor, where defendants were called in as adverse witnesses for cross-examination and compelled to testify that they have unlawfully sold liquor, the bill of complaint will be dismissed on the ground that the defendants were compelled to testify against themselves, and they were granted immunity from further prosecution. Zambroni v. State, 217 Miss. 418, 64 So. 2d 335, 1953 Miss. LEXIS 446 (Miss. 1953).

Defendant who, by his testimony, admitted the sale of intoxicating liquor in connection with his mercantile business, could not be prosecuted under this section [Code 1942, § 2646], in view of the statute providing that no person shall be prosecuted or subject to penalty for forfeiture for or on account of any transaction, matter of thing, concerning which he may testify, or produce evidence before the grand jury or any court, since by his confession of guilt defendant subjected himself to the forfeiture of both his liquor business and his mercantile business, as against the contention that the court merely enjoined the further prosecution in the business and imposed no penalty or forfeiture. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

7. Temporary injunction.

Temporary injunction against liquor nuisance was not void because premises described consisted of 50 acres of land through which a highway ran. Smith v. State, 245 Miss. 418, 146 So. 2d 73, 1962 Miss. LEXIS 562 (Miss. 1962).

The basis of invoking equitable jurisdiction under this section [Code 1942, § 2646] is the existence of a common nuisance brought about by facts specifically alleged in regard to violation of criminal laws by keeping, storing and selling intoxicating liquors in violation of the law on the premises which are alleged to constitute the common nuisance and the court may grant a temporary injunction without notice and the fact that this section then contemplates that the owner may be required by the court to enter into a bond to the condition that the obligor therein would not violate any of the prohibition laws. State ex rel. Hawkins v. Busby, 224 Miss. 181, 79 So. 2d 728, 1955 Miss. LEXIS 474 (Miss. 1955).

Where a bill of complaint for an injunction was filed in the chancery court and the chancery court issued a temporary injunction without notice enjoining defendant from conducting unlawful business in violation of intoxicating liquor laws, the chancellor did not intend to abate the place of business as a common nuisance without notice to the defendant operator of such place of business, prior to a final hearing on the bill of complaint, and the purpose of the temporary injunction was to restrain the sale of intoxicating liquors at place of business sought to be abated pending the hearing of a bill of complaint in that behalf. State ex rel. Hawkins v. Busby, 224 Miss. 181, 79 So. 2d 728, 1955 Miss. LEXIS 474 (Miss. 1955).

The rules applicable to injunctions generally are applicable to injunctions issued under liquor statutes and a temporary injunction can operate only until the conclusion of the trial. Rochelle v. State, 222 Miss. 83, 75 So. 2d 268, 1954 Miss. LEXIS 623 (Miss. 1954).

Where a temporary writ of injunction was issued in a suit to have the premises of the defendant where liquors and slot machines were kept and exhibited, the writ of injunction was not void, neither was it erroneously nor improvidently granted and the defendant had to obey injunction. McBride v. State, 221 Miss. 508, 73 So. 2d 154, 1954 Miss. LEXIS 557 (Miss. 1954).

8. Decrees.

In no event should an injunction undertake to prohibit the possession or sale of intoxicating liquors at places other than the premises which were abated as a nuisance. Everett v. State, 232 Miss. 816, 100 So. 2d 583, 1958 Miss. LEXIS 335 (Miss. 1958).

Since the statute did not give to the chancery court power to enjoin a defendant from violating the liquor and gambling laws anywhere in the state, other than on the premises found to be a common nuisance, an injunction, which undertook to prohibit defendant from having intoxicating liquors and gambling devices in his possession at places other than the place ordered to be abated as a nuisance, was invalid. Horne v. State, 232 Miss. 252, 98 So. 2d 653, 1957 Miss. LEXIS 465 (Miss. 1957).

Since a decree enjoining defendant, one of the owners of certain premises abated as a common nuisance, from permanently having intoxicating liquors in his possession or control throughout the territorial limits of the county and the entire state, was not authorized by this section [Code 1942, § 2646], defendant, who was arrested several miles from the vicinity of the abated premises while in possession of intoxicating liquors was improperly adjudged in contempt of court. Warren v. State, 231 Miss. 343, 95 So. 2d 237, 1957 Miss. LEXIS 518 (Miss. 1957).

A decree directing the issuance of an injunction against a place as a common nuisance is in personam against the person or persons against whom the same is rendered and operates in rem against the particular premises insofar as concerns the illegal use of such premises. Vermillion v. State, 210 Miss. 255, 49 So. 2d 401, 1950 Miss. LEXIS 345 (Miss. 1950).

While the court can, under this section [Code 1942, § 2646], abate and enjoin the prosecution of a business adjudged to be a common nuisance, such as selling of liquor and gambling, and require offenders to execute a bond to comply with the decree, the court is without power to order the padlocking of the buildings, where defendants have executed the compliance bond. Foreman v. State, 209 Miss. 331, 46 So. 2d 794, 1950 Miss. LEXIS 394 (Miss. 1950).

This section [Code 1942, § 2646], and Laws 1938, Chap. 341 [Code 1942, § 1073], and Code 1930, § 1979 [Code 1942, § 2618], authorized and warranted proceedings to abate nuisances of selling intoxicating liquors and carrying on gambling on certain premises, and a decree perpetually enjoining the defendant from operating such nuisances and providing for the condemnation and sale of all personal property used in connection therewith, where the lawful use of the real estate involved was not interfered with, is permissible. Caravella v. State, 185 Miss. 1, 186 So. 653, 1939 Miss. LEXIS 118 (Miss. 1939).

9. Contempt proceedings.

Violation of an injunction issued under this section [Code 1942, § 2646] may be punished as contempt notwithstanding such violation is a penal offense for which the contemnor has been punished. Church v. State, 239 Miss. 1, 111 So. 2d 228, 1959 Miss. LEXIS 541 (Miss. 1959).

Since the statute did not give to the chancery court power to enjoin a defendant from violating the liquor and gambling laws anywhere in the state, other than on the premises found to be a common nuisance, an injunction which undertook to prohibit the defendant from having intoxicating liquors and gambling devices in his possession at places, other than the place ordered to be abated as a nuisance, was invalid, so that a defendant, charged with violating the invalid portion of the injunction, was improperly found to be in contempt of court. Horne v. State, 232 Miss. 252, 98 So. 2d 653, 1957 Miss. LEXIS 465 (Miss. 1957).

Since an injunction enjoining defendant, one of the owners of certain premises abated as a common nuisance, from permanently having unlawful possession or control of intoxicating liquor throughout the territorial limits of the county and the entire state, was not authorized by this section [Code 1942, § 2646], the defendant, who was arrested several miles from the vicinity of the premises abated as a nuisance while in possession of intoxicating liquors was improperly adjudged in contempt of court. Warren v. State, 231 Miss. 343, 95 So. 2d 237, 1957 Miss. LEXIS 518 (Miss. 1957).

In a contempt action for violation of injunction against possession and sale of intoxicating liquor on described premises, the mere smelling of what officers believed to be the odor of whisky without cooperation of any kind was insufficient evidence to sustain adjudication of contempt. Little v. State, 223 Miss. 424, 78 So. 2d 578, 1955 Miss. LEXIS 398 (Miss. 1955).

Where an injunction prohibited defendant from selling intoxicating liquors on certain described premises and there was evidence that defendant did sell intoxicating liquor on a separate tract of land in adjoining premises, the evidence did not sustain conviction of defendant for contempt of court for violating the injunction decree. Rochelle v. State, 222 Miss. 83, 75 So. 2d 268, 1954 Miss. LEXIS 623 (Miss. 1954).

This section [Code 1942, § 2646] may appropriately be taken in connection with Code 1942, § 1278, which is declaratory of the power of the chancery court or chancellor in vacation to punish any person for violation of an injunction as for a contempt. Murphy v. State, 202 Miss. 890, 32 So. 2d 875, 1947 Miss. LEXIS 352 (Miss. 1947).

Testimony establishing that defendant was found in possession of a substantial quantity of whisky which he was seen to hide about a foot and a half outside the fence which enclosed his home place and that he told the officers who made the search that he was in the "general bootlegging" business, justified a finding of violation of the chancellor's prior injunction order warranting punishment as for contempt. Murphy v. State, 202 Miss. 890, 32 So. 2d 875, 1947 Miss. LEXIS 352 (Miss. 1947).

Decree in contempt proceedings for violation of an injunction order reciting that defendant wilfully, unlawfully and in violation of the court's order had in his possession intoxicating liquors was not objectionable as a conviction of defendant for a general violation of the law rather than as regards the nuisance feature of the injunction, even if the court's opinion, made a part of the record, had not recited that the court found from the evidence that whiskey was found near the premises of the defendant and was in his possession, since the chancellor was acting upon the entire record before him. Murphy v. State, 202 Miss. 890, 32 So. 2d 875, 1947 Miss. LEXIS 352 (Miss. 1947).

The presumption is that in this section [Code 1942, § 2646] the legislature employed the words "contempt" in contemplation of the element of ability or disability to comply. Hansbrough v. State, 193 Miss. 461, 10 So. 2d 170, 1942 Miss. LEXIS 128 (Miss. 1942); White v. State, 193 Miss. 467, 10 So. 2d 171, 1942 Miss. LEXIS 129 (Miss. 1942).

A defendant should not be imprisoned for contempt for failure to furnish the bond ordered by the court, conditioned upon the defendant's not violating any of the prohibition laws, where such failure was due, not to his wilful disobedience of the order of the court, but to his inability to procure the necessary securities on his bond. Hansbrough v. State, 193 Miss. 461, 10 So. 2d 170, 1942 Miss. LEXIS 128 (Miss. 1942); White v. State, 193 Miss. 467, 10 So. 2d 171, 1942 Miss. LEXIS 129 (Miss. 1942).

10. Limitation of actions.

In determining whether a person cited for contempt has the right to a jury trial, which determination must be based on whether the contempt is to be treated as a serious or a petty offense, the court must look to the maximum sentence which could be imposed under the statute if a maximum penalty has been set, and if no maximum penalty has been set, the court should look to the penalty actually imposed as the best evidence of the seriousness of the offense. McGowan v. State, 258 So. 2d 801, 1972 Miss. LEXIS 1516 (Miss.), cert. denied, 409 U.S. 1006, 93 S. Ct. 430, 34 L. Ed. 2d 298, 1972 U.S. LEXIS 632 (U.S. 1972).

A defendant who, in a trial without a jury was found guilty of contempt for violating an injunction prohibiting him from conducting the unlawful business of keeping and selling intoxicating liquor on certain premises, and was sentenced to 5 months imprisonment and a fine of $750, was not entitled to a jury trial, but was entitled to have his fine reduced to $500. McGowan v. State, 258 So. 2d 801, 1972 Miss. LEXIS 1516 (Miss.), cert. denied, 409 U.S. 1006, 93 S. Ct. 430, 34 L. Ed. 2d 298, 1972 U.S. LEXIS 632 (U.S. 1972).

The two-year limitation in the statute covers only the extent of liability under the bond and begins when the bond is executed and approved. Weems v. State, 210 Miss. 824, 50 So. 2d 398, 1951 Miss. LEXIS 318 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Admissibility, in prosecution for maintaining liquor nuisance, of evidence of general reputation of premises. 68 A.L.R.2d 1300.

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 345 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 112, 113 (complaint, petition, or declaration to abate and enjoin saloon as nuisance); Form 136 (judgment or decree abating nuisance and enjoining defendant).

CJS.

48 C.J.S., Intoxicating Liquors §§ 788 et seq.

Law Reviews.

Rychlak, Common-Law remedies for environmental wrongs: The role of private nuisance. 59 Miss. L. J. 657, Winter, 1989.

§ 99-27-25. Club to forfeit charter; boat may be sold.

Any chartered club or incorporated association of persons under the laws of Mississippi that is guilty of violating any of the provisions of Chapter 31 of Title 97, Mississippi Code of 1972 or this chapter or maintains or keeps any such place as hereinabove described, shall forfeit its charter, and such forfeiture may be declared by a proceeding in quo warranto or other appropriate action against the club or incorporated association in a court of competent jurisdiction in the county where the unlawful act is committed. Any boat or vessel that is guilty of violating any of the provisions of this section, adjudged or decreed to be a nuisance may also be ordered to be sold, as directed by the court and the proceeds after paying costs, paid into the general fund of the county treasury.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163i; 1930, § 2008; 1942, § 2647; Laws, 1918, ch. 189.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The word "proceedings" was changed to "proceeding". The Joint Committee ratified the correction at its December 3, 1996 meeting.

Editor's Notes — Sections 97-31-1 and 97-31-3, included in Chapter 31 of Title 97, referred to in this section, were repealed by Laws of 1988, ch. 562, § 3, effective from and after July 1, 1988.

Section 97-31-13, included in Chapter 31 of Title 97, referred to in this section, was repealed by Laws of 1980, ch. 453, effective from and after passage (approved May 1, 1980).

Cross References — Quo warranto proceedings generally, see §§ 11-39-1 et seq.

§ 99-27-27. Common carriers, etc., required to produce books for examination.

In the prosecutions of violations of Chapter 31 of Title 97, Mississippi Code of 1972, or this chapter any common carrier, or any other person or transportation agency doing business in the State of Mississippi shall be required to produce any books, documents, or records in its possession or under its control throwing any light upon such prosecution, when commanded by process issued under the authority of this state and shall be required to permit an examination to be made of such by an officer of the state, whose duty it is to prosecute crime, where such information is sought in the aid of any criminal prosecution, or as the means to ferret out criminals or persons charged with or suspected of crime.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163j; 1930, § 2009; 1942, § 2648; Laws, 1918, ch. 189.

Cross References — Transportation of wine and beer by common carriers, see § 67-3-61.

§ 99-27-29. Common carriers, etc. to keep record of alcohol and wine deliveries; inspection by officers; competent evidence at trial.

It shall be the duty of every railroad company, express company, or other common carrier, and of every person, firm or corporation, that shall transport any of the alcohol or wine mentioned into the state from any points or places for the purpose of delivery and who shall deliver such alcohol or wine, or either of them, to any person, firm or corporation in this state, to currently keep in a fair and legible hand, or typewritten or otherwise, so that same may be easily read, a record of such alcohol or wine, and of the delivery thereof, which shall set forth the dates on which said alcohol or wine were received and delivered, the names and postoffice address of the consignor and consignee, the place of delivery, and the person to whom delivered and the kind and amount of such alcohol or wine delivered. The record hereinabove required to be kept by common carriers, or persons, firms or corporations making the delivery of said alcohol or wine, or either of them, in this state, shall also be open to the inspection (1) of all officers, (2) of the duly authorized persons seeking information for the prosecution of persons charged with or suspected of crime, and when application is made by any of the said officers or persons for permission to examine and take copies of such record, they shall be allowed to do so during office or business hours, of the persons or corporations keeping such records, and in such reasonable manner as not to interfere with the business of the corporation or person keeping said record. The said record may be secured to be produced in court by any lawful process, issued by any court in this state to be used as evidence, and said record shall be competent evidence upon the trial of any causes whatsoever in any of the said courts, in which the record may be material or relevant to the issues involved.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163r; 1930, § 2018; 1942, § 2657; Laws, 1918, ch. 189.

Cross References — Transportation of wine and beer by common carriers, see § 67-3-61.

JUDICIAL DECISIONS

1. In general.

May-Mott-Lewis Act 1914, ch. 127 § 5, requiring carriers of liquor into state to keep a record thereof, is not invalid as burden on interstate commerce. American Express Co. v. Beer, 107 Miss. 528, 65 So. 575, 1914 Miss. LEXIS 116 (Miss. 1914).

§ 99-27-31. Common carriers, etc. to file statement of deliveries with circuit clerk; procedure to compel compliance.

It shall be the duty of every railroad company, express company, or other carrier, and of every person, firm or corporation, that shall transport any of the alcohol or wine authorized, and who shall deliver such alcohol or wine or either of them in this state, to file with the clerk of the circuit court of the county in which said alcohol or wine is delivered, a statement, either printed or plainly written, or typewritten on stout paper, correctly stating the date on which the alcohol or wine was delivered, the name and postoffice address of the consignee and consignor, the place of delivery, and to whom delivered, and the kind and amount of such liquors delivered, such statement to be filed within three days after the date of delivery of such liquor. If said statement is in writing, it shall be in a fair and legible hand, and the names of the consignee and the consignor and of the party who obtained delivery shall be truly ascertained and furnished in such way as to avoid mistakes in names. If any person, firm or corporation making delivery shall neglect to file with the circuit clerk such statement or statements, then it shall be the duty of the circuit clerk to make written demand upon such person, firm or corporation, to comply with the requirements of this section, such demand to be served by the sheriff and return made by him to the circuit clerk upon a copy of the original demand. Upon further refusal or noncompliance, it shall be the duty of the circuit clerk to promptly inform the attorney-general of the state of such failure or refusal, and it shall then be the duty of the attorney-general, either himself to file, or to direct and secure some district attorney or county attorney whose duty it is to prosecute crime in the county, to file a suit in the name of the state.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163p; 1930, § 2016; 1942, § 2655; Laws, 1918, ch. 189.

Cross References — Attorney general generally, see §§ 7-5-1 et seq.
Clerk of circuit court generally, see §§ 9-7-121 et seq.
Duties of district attorney generally, see § 25-31-11.
Transportation of wine and beer by common carriers, see § 67-3-61.
Reports of motor carriers generally, see § 77-7-261.

§ 99-27-33. Circuit clerk to file and record statement; inspection by officers; competent evidence at trial; grand jury to investigate compliance.

It shall be the duty of the circuit clerk to immediately file the statement required by Section 99-27-31, as a part of the records in his office, and to preserve such statement, or statements, for a period of twelve months, after which time they may be destroyed, and (1) permit any sheriff, deputy sheriff, constable, chief of police, or other police officer of a town or city, or any district or county attorney whose duty it is to prosecute crime in the county in which delivery is made, and any other peace officer of the county to inspect the said statement as they may desire at any time the office of said circuit clerk may be open, and especially to permit inspection thereof by any officer, or other duly authorized person seeking information for the prosecution of persons charged with or suspected of crime; and (2) to permit any and all other persons so desiring to inspect the said statements, to do so at any time the office of the circuit clerk may be open, it shall be the further duty of the circuit clerk to give a certified copy of such statement to any of said officers without charge or to any other person requesting or demanding the same upon the payment of lawful fees therefor and the said original statements or certified copies thereof shall be competent evidence upon the trial of any cause whatever in any of the courts of this state in which same may be relevant or material to the issue or issues involved.

Every grand jury shall appoint a committee of three to examine the records of the circuit clerk and investigate whether this section is being complied with and the circuit judge shall charge the grand jury to this effect.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163q; 1930, § 2017; 1942, § 2656; Laws, 1918, ch. 189.

Cross References — Clerk of circuit court generally, see §§ 9-7-121 et seq.

§ 99-27-35. Venue of prosecutions for unlawful shipment.

In all prosecutions under Chapter 31 of Title 97, Mississippi Code of 1972 and this chapter for unlawful shipments of liquors, bitters, or drinks prohibited by the laws of the state to be sold, bartered or otherwise disposed of in this state, the offense shall be held to have been committed in any county of the state through which or into which said liquors have been carried or transported, or in which they have been unloaded, or in which they have been delivered, or conveyed for delivery; and this applies whether the said liquors, bitters and drinks are shipped into the state from outside of the state, or shipped or transported from one point in the state to any other point in the state. The circuit court held in the county from which, through which, or to which such shipments are made, or in which delivery of any such shipment is made, shall have jurisdiction for the trial of such violations of the chapters and the grand jury of such counties shall be vested with inquisitorial powers over violations of the chapters.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163l; 1930, § 2011; 1942, § 2650; Laws, 1918, ch. 189.

Editor's Notes — Sections 97-31-1 and 97-31-3, included in Chapter 31 of Title 97, referred to in this section, were repealed by Laws of 1988, ch. 562, § 3, effective from and after July 1, 1988.

Section 97-31-13, included in Chapter 31 of Title 97, referred to in this section, was repealed by Laws of 1980, ch. 453, effective from and after passage (approved May 1, 1980).

Cross References — Venue in criminal cases generally, see § 99-11-3.

RESEARCH REFERENCES

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors § 265.

§ 99-27-37. Counties and municipalities may appropriate money to procure evidence of liquor and narcotics violations.

The board of supervisors of any county in this state and mayor and board of aldermen, or board of aldermen and councilmen, as the case may be, of any municipality in this state are hereby authorized and empowered to appropriate, from time to time, sums of money, not exceeding one-third (⅓) of the fines which have been collected by them respectively, from the unlawful sale or possession of intoxicating liquors and/or narcotics and/or other illegal drugs, for the purpose of defraying expenses incurred by law enforcement agencies in the procuring of evidence of violations of statutes or ordinances, as the case may be, against the unlawful sale or keeping of intoxicating liquors and/or narcotics and/or other illegal drugs. For the purpose of this section, the word "expenses" shall include, but not be limited to, expenditures related to surveillance, the purchase of investigative equipment, the purchase of samples to be used as evidence, the purchase of information, and the defraying of living expenses of persons specially employed in investigations.

HISTORY: Codes, Hemingway's 1917, § 2124; 1930, § 2002; 1942, § 2641; Laws, 1912, ch. 124; Laws, 1970, ch. 347, § 1; Laws, 1986, ch. 327, eff from and after passage (approved March 14, 1986).

JUDICIAL DECISIONS

1. In general.

This section prohibits constables from receiving additional compensation for procuring evidence in intoxicating liquor cases. Ellington v. State, 366 So. 2d 1077, 1978 Miss. LEXIS 2441 (Miss. 1978).

This section [Code 1942, § 2641] is a mere enabling act authorizing board of supervisors to make such appropriations in their discretion, and in amounts less than one-third if thought proper. Hancock County v. Vairin, 119 Miss. 315, 80 So. 780, 1919 Miss. LEXIS 8 (Miss. 1919).

Sheriff employing persons to secure evidence of violation of liquor laws, upon the authority of board of supervisors, is entitled to reimbursement for sums paid such persons if the board has agreed to pay such sums and has appropriated funds for that purpose. Hancock County v. Vairin, 119 Miss. 315, 80 So. 780, 1919 Miss. LEXIS 8 (Miss. 1919).

County not liable for one-third of fine imposed until the fine has been collected. Grenada County v. Little, 111 Miss. 605, 71 So. 871, 1916 Miss. LEXIS 346 (Miss. 1916).

OPINIONS OF THE ATTORNEY GENERAL

If Board of Supervisors of each county involved in narcotics task force approves the appropriation allowed at Section 99-27-37, one third of fines collected by task force may be returned to task force to defray expenses listed in statute. Jennings, Oct. 15, 1992, A.G. Op. #92-0601.

§ 99-27-39. Payment by liquor dealers of penalty to state, county, or municipality.

Any person who may sell or give away malt, vinous or spirituous liquors unlawfully, or who shall allow the same to be sold or given away at his place of business, for any purpose whatever, or shall knowingly permit any person not interested in or connected with such business to keep and drink or give away at such place of business any vinous, malt or spirituous liquors, shall be subject to pay to the state, county, city, town or village, where the offense is committed, each, the sum of five hundred dollars ($500.00). The state, county, city, town or village, or any taxpayer of the state, county, city, town or village in the name thereof, or the state tax commission, or any tax collector within the county acting for them, may sue for and recover civilly, either jointly or separately, each said sum of five hundred dollars ($500.00); and such civil suit may be commenced by attachment without bond.

HISTORY: Codes, Hemingway's 1917, § 2121; 1930, § 2000; 1942, § 2639; Laws, 1910, ch. 134; Laws, 1912, ch. 256; Laws, 1962, ch. 588, § 16, eff from and after Jan. 1, 1964.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Imposition of standard state assessment in addition to court imposed fines or other penalties for misdemeanors and felonies, see § 99-19-73.

Chancery court to have concurrent jurisdiction with courts of law to entertain suits under this section, see § 99-27-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right to trial by jury.
3. Self-incrimination.
4. Who may bring suit.
5. Pleading.
6. Evidence.

1. In general.

The amount of penalties which may be recovered by the state, the county and the municipality for a violation of this statute is not to be determined according to the number of sales which the proof may show the defendant has made; the word "each" in the statute clearly refers to state, county and city, not to the sale. Winter v. Hardester, 232 Miss. 200, 98 So. 2d 629, 1957 Miss. LEXIS 460 (Miss. 1957).

In an action by a state tax collector to recover statutory penalties due for unlawful sale of intoxicating liquor the fact that the state tax collector, engaged in the collection of black market tax, has not filed similar suits against persons paying that tax, was not a ground that the suit was discriminatory or that the state tax collector did not come into court with clean hands. Freeman v. Bailey, 222 Miss. 904, 77 So. 2d 682, 1955 Miss. LEXIS 682 (Miss. 1955).

The use of strong methods by collector to collect from delinquent taxpayers penalties on sale of intoxicating liquor, is not discrimination against such delinquents where such force is not necessary to secure payment by others. Bishop v. Bailey, 209 Miss. 892, 48 So. 2d 588, 1950 Miss. LEXIS 454 (Miss. 1950).

Since preparations containing alcohol in large quantities, which are sold for beverage purposes, constitute "vinous or spirituous liquors," a suit to recover for the sale of intoxicating liquor, particularly alcohol for beverage purposes, and to suppress the place of business as a nuisance would more properly be brought under the sections of statute particularly relating thereto, than under a section authorizing the bringing of a suit to abate by injunction a place where liquor was alleged to have been sold. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

The forfeiture provided hereunder is not a debt or obligation within the purview of the business sign statute (Code 1930, § 3352 [Code 1942, § 273]). International Harvester Co. v. Gully, 188 Miss. 115, 194 So. 472, 1940 Miss. LEXIS 21 (Miss. 1940); Malvezzi v. Gully, 189 Miss. 20, 193 So. 42, 1940 Miss. LEXIS 93 (Miss. 1940); General Motor Acceptance Corp. v. Gully, 194 So. 473 (Miss. 1940).

Jamaica ginger is "spirituous" or "vinous liquor" within act imposing penalties for sale. Payne v. State, 125 Miss. 896, 88 So. 483, 1921 Miss. LEXIS 171 (Miss. 1921).

Sale of malt liquors cannot be enjoined under this section [Code 1942, § 2639]. Collotta v. State, 110 Miss. 448, 70 So. 460, 1915 Miss. LEXIS 55 (Miss. 1915).

This provision does not authorize criminal prosecution. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

Suit in chancery to recover penalties for illegal sale of liquor is a civil suit. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

Complainant suing under this section [Code 1942, § 2639] has right of attachment. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

No affidavit necessary for attachment under this section [Code 1942, § 2639]. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

2. Right to trial by jury.

Statute which provides for recovery of penalty for sale of intoxicating liquor is a civil and not a criminal proceeding and the right to trial by jury of such a matter in the chancery court does not exist. Bishop v. Bailey, 209 Miss. 892, 48 So. 2d 588, 1950 Miss. LEXIS 454 (Miss. 1950); Freeman v. Bailey, 222 Miss. 904, 77 So. 2d 682, 1955 Miss. LEXIS 682 (Miss. 1955).

3. Self-incrimination.

Where defendants in a suit by state tax collector to collect from defendants statutory fines and penalties for unlawful sale of intoxicating liquors, were required to answer allegations in a bill of complaint in chancery and therefore they were required to incriminate themselves, the defendants were immune from assessment of fines and penalties. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

In a suit by the state tax collector to collect from defendant statutory fines and penalties for unlawful sales of intoxicating liquors, where the defendants raised the issue that by answering averments to the bill of complaint they would incriminate themselves and where defendants were compelled by the court to answer the bill fully, the defendants were immune from liability for the fines and penalties although the bill of complaint waived answer under oath. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

Code 1942, § 1291 which provides that a defendant in chancery shall answer fully all of the allegations of the bill, and that all averments of fact not denied by the answer otherwise than by general traverse may be taken at the hearing as admitted, applies to suits for penalties under this section [Code 1942, § 2639] and Code 1942, § 2640. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

Code 1942, § 2630 which provides that no person shall be excused from testifying before a grand jury or any court in any proceeding, criminal or otherwise, on the ground that the testimony may tend to incriminate him or subject him to penalty or forfeiture but providing that person testifying shall be exempt from prosecution or punishment, applies to this section [Code 1942, § 2639] and defendant is made immune from fines and penalties. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

Where one accused of selling intoxicating liquors on his premises in violation of law was called by the state tax collector to testify, he was immune from the consequences of the violation of law and was entitled to be discharged. Serio v. Gully, 189 Miss. 558, 198 So. 307, 1940 Miss. LEXIS 144 (Miss. 1940).

One who by his testimony admitted his guilt in selling intoxicating liquors in connection with his drygoods and grocery business was immune from prosecution under this section [Code 1942, § 2639] in view of the statute providing that no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction concerning which he may testify or produce evidence before the grand jury or any court, since his testimony subjected him to penalties and forfeitures, as against the contention that the court merely enjoined the further prosecution of the business and imposed no penalty or forfeiture. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

4. Who may bring suit.

Although a taxpayer has a right to sue under this section [Code 1942, § 2639] in the capacity of a fiduciary or trustee for the benefit of the county and state, he has no right to compromise or dismiss the suit upon the payment of money to him for his own personal use and to defraud the state and county in obstructing administration of justice in the court. Melvin v. State, 210 Miss. 132, 48 So. 2d 856, 1950 Miss. LEXIS 329 (Miss. 1950).

A district attorney was not authorized to bring suit to recover the tax imposed for selling intoxicating liquors for beverage purposes or a suit to suppress as a nuisance a place of business at which alcohol was alleged to have been kept and sold for such purposes, although he would be authorized to sue in proper cases to abate by injunction as a common nuisance a place where intoxicating liquors were found, kept, or possessed. The action should have been brought by the state tax collector, or any sheriff or taxpayer of the county. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

Formerly the state tax collector had the right to bring a suit to collect by attachment the tax imposed against a defendant for unlawfully selling intoxicating liquors at his place of business and for suppression thereof as a nuisance. Montroy v. Gully, 189 Miss. 13, 193 So. 40, 1940 Miss. LEXIS 92 (Miss. 1940); Tuminello v. Gully, 189 Miss. 28, 193 So. 39, 1940 Miss. LEXIS 91 (Miss. 1940).

The district attorney is not empowered to bring suit under this section [Code 1942, § 2639]. Sullivan v. Gully, 187 Miss. 134, 192 So. 568, 1940 Miss. LEXIS 200 (Miss. 1940).

A joint suit in equity by the state tax collector and a county district attorney to collect monetary penalties for the sale of intoxicating liquors at defendant's place of business and to abate such place as a nuisance was improper as constituting a misjoinder of parties and of causes of action; and the court below erred in not entering an order in response to a special demurrer and a separate bill, but without a new contest, should be filed by the state tax collector. Sullivan v. Gully, 187 Miss. 134, 192 So. 568, 1940 Miss. LEXIS 200 (Miss. 1940).

5. Pleading.

Answer of defendant to bill in equity to recover statutory penalty for unlawful possession and sale of whisky at defendant's place of business, denying that he owned a place of business as described in the bill, that he had whisky in his possession at such place, and denying that he sold whisky at such place was insufficient as being a denial of the bill by general traverse, its effect being to admit, at least the fact that defendant owned the business alleged to have been carried on in violation of law. Noe v. Gully, 189 Miss. 1, 193 So. 36, 1940 Miss. LEXIS 90 (Miss. 1940).

6. Evidence.

The presumption that the owner of a place of business has knowledge of the presence of intoxicating liquor, flowing from the sale of intoxicating liquors in his place of business, and its reputation as a place where intoxicating liquors could be, and were, bought, was sufficient to sustain the judgment of the chancery court assessing the statutory penalty and abating the place as a nuisance, where the owner did not testify. Noe v. Gully, 189 Miss. 1, 193 So. 36, 1940 Miss. LEXIS 90 (Miss. 1940); Nause v. Gully, 193 So. 41

(Miss. 1940); Assad v. Gully, 193 So. 42 (Miss. 1940).

In proceedings to recover statutory penalties for the unlawful possession and sale of whisky at defendant's place of business, evidence of the general reputation of such place as being a place where intoxicating liquors can be bought is admissible. Noe v. Gully, 189 Miss. 1, 193 So. 36, 1940 Miss. LEXIS 90 (Miss. 1940); Malvezzi v. Gully, 189 Miss. 20, 193 So. 42, 1940 Miss. LEXIS 93 (Miss. 1940).

Evidence that whisky was sold at defendant's place of business by a Negro helper and employee of defendant, and that place had general reputation as being a place where whisky could be and was bought and sold sustained decree assessing penalties and suppressing the place as a nuisance. Montroy v. Gully, 189 Miss. 13, 193 So. 40, 1940 Miss. LEXIS 92 (Miss. 1940).

In proceedings in equity to collect by attachment a tax imposed for selling or allowing the sale of intoxicating liquor unlawfully at defendant's place of business and to suppress such place as a nuisance by injunction, the oral testimony offered before the chancellor, together with the fact that defendant gave bond, as principal obligor therein, for the attached property, including the stock of merchandise, sustained the finding of the chancellor defendant owned and operated the place of business, bearing his name or trade sign, at which the witnesses purchased the intoxicating liquor testified about in the case. Montroy v. Gully, 189 Miss. 13, 193 So. 40, 1940 Miss. LEXIS 92 (Miss. 1940).

In a proceeding by the state tax collector to collect by attachment the tax imposed for unlawfully selling intoxicating liquors at defendant's place of business and for the suppression of such place as a nuisance, the filing by defendant of a claim of exemption, under oath, as a resident citizen and householder, claiming as exempt from levy under attachment a large portion of the personal property which, according to the officer's return of the writ, was located in the place of business in question and the acknowledgment in such claim of exemption that the remainder thereof had been sold to him under retain title contract, sustains the finding that defendant owned and operated the place of business at which it was claimed intoxicating liquors were sold. Tuminello v. Gully, 189 Miss. 28, 193 So. 39, 1940 Miss. LEXIS 91 (Miss. 1940).

Finding of the chancery court that the person who sold the whisky in question over the counter in the place of business was allowed to do so by the defendant as owner and operator, was not erroneous, especially in view of the proof that the general reputation was that it was a place where intoxicating liquors could be bought and were sold. Tuminello v. Gully, 189 Miss. 28, 193 So. 39, 1940 Miss. LEXIS 91 (Miss. 1940).

The defendant, appealing to the supreme court with supersedeas, so far as the decree retaining the injunction against the sale of intoxicating liquors at his place of business, was in no position to successfully contend that he was not interested as owner, even though the oral testimony offered by the state tax collector of that issue might not clearly establish ownership. Tuminello v. Gully, 189 Miss. 28, 193 So. 39, 1940 Miss. LEXIS 91 (Miss. 1940).

RESEARCH REFERENCES

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 338 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Forfeitures and Penalties, Forms 41 et seq. (penalties).

CJS.

48 C.J.S., Intoxicating Liquors §§ 356-387, 388-408 et seq.

§ 99-27-41. Concurrent jurisdiction given chancery courts for enforcing § 99-27-39.

The chancery court shall have concurrent jurisdiction with courts of law to entertain suits under Section 99-27-39 for the enforcement thereof, instituted by the state, county, or any city, town or village, or by any taxpayer thereof, in the name of the state, county, city, town or village, or by the state tax commission, or by any tax collector within his county acting for them, and the chancery court shall have authority to suppress as a nuisance any place of business where the said section is violated, and by proper judgments and orders, punish and restrain the violators thereof.

HISTORY: Codes, Hemingway's 1917, § 2122; 1930, § 2001; 1942, § 2640; Laws, 1910, ch. 134; Laws, 1962, ch. 588, § 17, eff from and after Jan. 1, 1964.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Jurisdiction of chancery court in general, see § 9-5-81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.
3. Suppression of business.
4. Miscellaneous.

1. In general.

Code 1942, § 1291 which provides that a defendant in chancery shall answer fully all of the allegations of the bill, and that all averments of fact not denied by the answer otherwise than by general traverse may be taken at the hearing as admitted, applies to suits for penalties under Code 1942, § 2639 and this section [Code 1942, § 2640]. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

Under this section [Code 1942, § 2640] it was immaterial that the action was for penalty only, and it was not necessary that such jurisdiction also exist under Miss Const., Art. 6, § 150, since the constitution practically obliterates line of demarcation between courts of law and equity. Miller v. State, 114 Miss. 713, 75 So. 549, 1917 Miss. LEXIS 84 (Miss. 1917).

This provision is not in conflict with Miss Const., Art. 6, § 159 defining jurisdiction of chancery court. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

2. Jurisdiction.

While the circuit court has concurrent jurisdiction to grant relief in the matter of enforcing the collection of the tax in favor of the state and county, the jurisdiction is granted to the chancery court alone to suppress as a nuisance any place of business where intoxicating liquors are sold in violation of law, and to restrain the violators. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

Where an action by the state tax collector for the recovery of penalties for the unlawful sale of intoxicating liquors and for general equitable relief was erroneously transferred from the chancery court to the circuit court, and it did not appear that any substantial right of the complainant was affected by the erroneous transfer, the only course open to the circuit court was to dismiss the action upon complainant's refusal to proceed. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

In the case of an erroneous transfer of an action by the state tax collector to recover the penalty for the unlawful sale of intoxicating liquors and for the abatement of a nuisance from the chancery to the circuit court was erroneous, the circuit court should and must proceed with the case, since there is no appeal from such erroneous transfer and no provision made for its correction. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

The transfer from chancery court to the circuit court of an action by the state tax collector to recover the penalty for unlawful sale of intoxicating liquors, wherein the bill contained a prayer for general equitable relief, although there was no specific prayer for abatement of the alleged nuisance nor for an injunction restraining the alleged violator of the law, was erroneous, since under such prayer for general relief the court would extend to the complainant such remedies as would be agreeable to the cause made out by the bill of complaint, whether specifically prayed for or not. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

The chancery court has jurisdiction concurrent with the courts of law to entertain suits to collect a statutory penalty for the unlawful sale of intoxicating liquors, in the name of any state, county, village or town, or any taxpayer of the state, county, city, town or village or the state tax collector, or any sheriff within the county acting for them, and the chancery court has express authority to suppress as a nuisance any place of business where the law is violated, by proper court order. Noe v. Gully, 189 Miss. 1, 193 So. 36, 1940 Miss. LEXIS 90 (Miss. 1940).

3. Suppression of business.

Where an injunction to abate a liquor nuisance identified the place of the illegal business, defendant was guilty of contempt where the liquor was found about 100 yards from his place of business. Atkins v. State, 213 Miss. 360, 56 So. 2d 886, 1952 Miss. LEXIS 375 (Miss. 1952).

Since preparations containing alcohol in large quantities, which are sold for beverage purposes, constitute "vinous or spirituous liquors," a suit to recover for the sale of intoxicating liquor, particularly alcohol for beverage purposes, and to suppress the place of business as a nuisance would more properly be brought under the sections of statute particularly relating thereto, than under a section authorizing the bringing of a suit to abate by injunction a place where liquor was alleged to have been sold. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

A defendant's drugstore would not be abated as a common nuisance on the ground that alcohol was sold in violation of the statute prohibiting any licensed retail drugstore from selling "pure" alcohol for medicinal purposes except on written prescription of a physician, where the suit was brought by the district attorney for the recovery of the tax imposed for selling or giving away liquors unlawfully, and to obtain an injunction suppressing the business as a nuisance. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

The suppression of the place of business, under this section [Code 1942, § 2640], means not only the liquor business, but also a mercantile business with which such liquor business was carried on. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

Where the liquor business is carried on in connection with some other business, such as a mercantile business, the chancery court is without authority to confine the relief to enjoining the sale of liquor alone-the commission of a criminal offense. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

4. Miscellaneous.

Where a temporary injunction was issued against keeping liquor on the premises and later liquor was found, and defendant was guilty of contempt, his contention that the liquor could have been on the premises at the time of issue of injunction was invalid because the fiat of the chancellor contained no authority to enjoin the defendant from removing liquor off the premises and the injunction itself did not so enjoin. Atkins v. State, 213 Miss. 360, 56 So. 2d 886, 1952 Miss. LEXIS 375 (Miss. 1952).

§ 99-27-43. Justices of the peace not to suspend sentences.

It shall be unlawful for any justice of the peace, with or without condition, to suspend any sentence lawfully imposed under Chapter 31 of Title 97, Mississippi Code of 1972, or this chapter.

HISTORY: Codes, 1930, § 2020; 1942, § 2659; Laws, 1922, ch. 210; Laws, 1950, ch. 348.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Sections 97-31-1 and 97-31-3, included in Chapter 31 of Title 97, referred to in this section, were repealed by Laws of 1988, ch. 562, § 3, effective from and after July 1, 1988.

Section 97-31-13, included in Chapter 31 of Title 97, referred to in this section, was repealed by Laws of 1980, ch. 453, effective from and after passage (approved May 1, 1980).

Cross References — Circuit and county judges suspending sentences in misdemeanor cases, see § 99-19-25.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Prior to February, 1950, the county courts were not authorized to suspend sentences in misdemeanor cases and any attempt of county judge to do so was unlawful. Freeman v. State, 220 Miss. 777, 72 So. 2d 139, 1954 Miss. LEXIS 495 (Miss. 1954).

Judgment of county court which recites unconditional plea of guilty, definite assessment of punishment in form of fine and imprisonment followed by suspension of imprisonment on condition of good behavior of convict is complete and valid judgment excepting that part suspending sentence which is void. Steadman v. State, 204 Miss. 322, 37 So. 2d 357, 1948 Miss. LEXIS 369 (Miss. 1948); Edwards v. State, 37 So. 2d 359 (Miss. 1948).

Release of defendant from custody on suspension of execution of sentence of imprisonment by county court, in excess of its powers, is unlawful and prisoner may be rearrested for service of suspended portion, without further court proceedings. Steadman v. State, 204 Miss. 322, 37 So. 2d 357, 1948 Miss. LEXIS 369 (Miss. 1948); Edwards v. State, 37 So. 2d 359 (Miss. 1948).

That more than two years had elapsed since imposition of fine and sentence, part of which had been unlawfully suspended by county judge, held not to relieve defendant from serving unsatisfied portion on ground that statute provided that no convict should be held in continuous confinement under conviction for any one offense for failure to pay fine and costs in such case for period of more than two years, where defendant was not in continuous confinement under suspended portion of sentence. Cameron v. Thompson, 178 Miss. 434, 173 So. 422, 1937 Miss. LEXIS 222 (Miss. 1937).

Petitioner who was placed in jail by sheriff for unlawful possession of intoxicating liquor and held by sheriff for about two weeks, and then delivered to federal marshal and held by him in custody for six months under federal sentence, held not thereby to have liquidated, but to be still subject to, portion of fine and sentence for selling of intoxicating liquor, which county judge had unlawfully suspended. Cameron v. Thompson, 178 Miss. 434, 173 So. 422, 1937 Miss. LEXIS 222 (Miss. 1937).

Suspension by county court of portion of fine and sentence for selling intoxicating liquor held void, release of defendant from custody of sheriff wrongful, and defendant thereafter still subject to arrest and confinement for unsatisfied portion of fine and sentence. Cameron v. Thompson, 178 Miss. 434, 173 So. 422, 1937 Miss. LEXIS 222 (Miss. 1937).

§ 99-27-45. Witnesses compelled to testify; disclosure not to be used against witness.

No person shall be excused from testifying before the grand jury or on the trial in any prosecution for any violation of this chapter or other law of this state for the promotion of temperance and the suppression of the evils of intemperance; but no disclosure or discovery made by such person is to be used against him in any criminal or penal prosecution for or on behalf of the matters disclosed.

HISTORY: Codes, Hemingway's 1921 Supp, § 2163k; 1930, § 2010; 1942, § 2649; Laws, 1918, ch. 189.

Cross References — Subpoena and swearing of witnesses before grand jury, see § 13-5-63.

RESEARCH REFERENCES

Lawyers' Edition.

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination. 32 L. Ed. 2d 869.

CHAPTER 29.

VAGRANCY PROCEEDINGS

Sec.
99-29-1 through 99-29-13. Repealed.

§§ 99-29-1 through 99-29-13. Repealed.

Repealed by Laws, 2018, ch. 333, § 2, eff from and after July 1, 2018.

§ 99-29-1. [Codes, 1906, § 5056; Hemingway's 1917, § 3333; 1930, § 3473; 1942, § 2667.]

§ 99-29-3. [Codes, 1906, § 5057; Hemingway's 1917, § 3334; 1930, § 3474; 1942, § 2668.]

§ 99-29-5. [Codes, 1906, § 5058; Hemingway's 1917, § 3335; 1930, § 3475; 1942, § 2669; Laws, 1981, ch. 471, § 56, made eff from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).]

§ 99-29-7. [Codes, 1906, § 5060; Hemingway's 1917, § 3337; 1930, § 3477; 1942, § 2671.]

§ 99-29-9. [Codes, 1906, § 5058; Hemingway's 1917, § 3335; 1930, § 3475; 1942, § 2669.]

§ 99-29-11. [Codes, 1906, § 5059; Hemingway's 1917, § 3336; 1930, § 3476; 1942, § 2670.]

§ 99-29-13. [Codes, 1906, § 5063; Hemingway's 1917, § 3340; 1930, § 3480; 1942, § 2674.]

Editor's Notes — Former § 99-29-1 required officers to give information under oath charging vagrancy and empowered them to issue criminal warrants of all vagrants.

Former § 99-29-3 authorized any resident of the state to file information charging vagrancy.

Former § 99-29-5 provided arrested vagrants be taken before proper judge for hearing.

Former § 99-29-7 provided that bonds were to be returned to the circuit court and docketed on criminal docket.

Former § 99-29-9 related to suit and recover on bond.

Former § 99-29-11 provided that a vagrant may be arrested after bond was forfeited.

Former § 99-29-13 provided that circuit court had concurrent jurisdiction to try all cases arising under former §§ 97-35-37 through 97-35-43 and §§ 99-29-1 through 99-29-13.

CHAPTER 31.

OBSCENE PUBLICATIONS PROCEEDINGS [REPEALED]

Sec.
99-31-1 through 99-31-27. Repealed.

§§ 99-31-1 through 99-31-27. Repealed.

Repealed by Laws, 1983, ch. 498, § 7, eff from and after July 1, 1983.

§ 99-31-1. [Codes, 1942, § 2674-01; Laws, 1962, ch. 322, § 1]

§ 99-31-3. [Codes, 1942, § 2674-02; Laws, 1962, ch. 322, § 2]

§ 99-31-5. [Codes, 1942, § 2674-04; Laws, 1962, ch. 322, § 4]

§ 99-31-7. [Codes, 1942, § 2674-05; Laws, 1962, ch. 322, § 5]

§ 99-31-9. [Codes, 1942, § 2674-06; Laws, 1962, ch. 322, § 6]

§ 99-31-11. [Codes, 1942, § 2674-07; Laws, 1962, ch. 322, § 7]

§ 99-31-13. [Codes, 1942, § 2674-08; Laws, 1962, ch. 322, § 8]

§ 99-31-15. [Codes, 1942, § 2674-09; Laws, 1962, ch. 322, § 9]

§ 99-31-17. [Codes, 1942, § 2674-10; Laws, 1962, ch. 322, § 10]

§ 99-31-19. [Codes, 1942, § 2674-11; Laws, 1962, ch. 322, § 11]

§ 99-31-21. [Codes, 1942, § 2674-13; Laws, 1962, ch. 322, § 13]

§ 99-31-23. [Codes, 1942, § 2674-14; Laws, 1962, ch. 322, § 14]

§ 99-31-25. [Codes, 1942, § 2674-15; Laws, 1962, ch. 322, § 15]

§ 99-31-27. [Codes, 1942, § 2674-16; Laws, 1962, ch. 322, § 16]

Editor's Notes — Former § 99-31-1 was entitled: Title.

Former § 99-31-3 was entitled: Definitions.

Former § 99-31-5 was entitled: Commencement of action for adjudication of obscenity of mailable matter.

Former § 99-31-7 was entitled: Filing and form of complaint.

Former § 99-31-9 was entitled: Examination of complaint and mailable matter.

Former § 99-31-11 was entitled: Appearance of respondents and amicus curiae-answer-final judgment or trial date.

Former § 99-31-13 was entitled: Public policy-procedure-trial by jury-evidence.

Former § 99-31-15 was entitled: Judgment.

Former § 99-31-17 was entitled: Injunctions.

Former § 99-31-19 was entitled: When mailable matter is subject to criminal provisions.

Former § 99-31-21 was entitled: Execution.

Former § 99-31-23 was entitled: Extradition.

Former § 99-31-25 was entitled: Presumptions.

Former § 99-31-27 was entitled: Nonresidents and noncitizens-acts submitting to jurisdiction-process-consent.

CHAPTER 33.

PROSECUTIONS BEFORE JUSTICE COURT JUDGES

Sec.
99-33-1. Criminal jurisdiction.
99-33-2. Commencing criminal cases; duties of clerk and judge; penalty for failure of judge to comply.
99-33-3. Procedures in criminal cases; minimum fine which may be imposed.
99-33-5. Subpoena may issue to any county.
99-33-7. Appearance bond may be taken.
99-33-9. Trial by jury.
99-33-11. Repealed.
99-33-13. Procedure when accused is guilty of felony; remand.
99-33-15. Authority to sentence misdemeanant to imprisonment on weekends or other nonworking hours.
99-33-17. Transfer of criminal case from justice court to municipal court in case of conflict.

§ 99-33-1. Criminal jurisdiction.

(1) Upon the election of any county to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 9-11-27 prior to January 1, 1984, the venue of criminal actions in such county shall be as provided in subsection (2) of this section.

(2) From and after January 1, 1984, justice court judges shall have jurisdiction concurrent with the circuit court of the county over all crimes occurring in the county whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail.

(3) A circuit court grand jury, after an evidentiary determination, may remand any case that may be tried as a felony or misdemeanor, and which it deems should be tried as a misdemeanor, to justice or municipal court to be tried as a misdemeanor.

HISTORY: Codes, 1871, § 1304; 1880, § 2216; 1892, § 2420; 1906, § 2749; Hemingway's 1917, § 2248; 1930, § 2097; 1942, § 1831; Laws, 1981, ch. 471, § 2; Laws, 1982, ch. 423, § 2; Laws, 2007, ch. 495, § 1, eff from and after July 1, 2007.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Section 9-11-27 does not have a subsection (3), as referred to in subsection (1).

Cross References — Authorization of prosecutions before justice court judge, see Miss. Const. Art. 3, § 27.

Jurisdiction of county court generally, see §§ 9-9-1 et seq.

Justice courts generally, see § 9-11-2 et seq.

Jurisdiction of justices of the peace over civil cases, see § 9-11-9.

Money paid into the justice court clerk clearing account, see § 9-11-18.

Members of county board of supervisors as conservators of the peace with all powers of justices of the peace, see § 19-3-39.

Issuance of arrest warrant by justice of peace for offenders coming into his jurisdiction, see § 99-3-21.

Issuance by justice of the peace of warrant for arrest of fugitive from another state, see § 99-21-1.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Jurisdiction in general.
3. Territorial limits.
4. Lack of qualified justice of peace in district.
5. Waiver.
6. Particular offenses.
7. Disposition of cases.

1. Validity.

Mississippi criminal statutory fees systems for compensating justices of the peace in Hinds and DeSoto Counties are violative of defendant's due process rights to trial before impartial tribunal under the Tumey-Ward test, where the possibility existed that judges in the aforementioned counties would compete for business by currying favor with arresting officers or taking biased actions to increase their case load, and where a judge might minimize the burden of proof required to convict the defendant or might be less than diligent in protecting the defendant's constitutional rights. Brown v. Vance, 637 F.2d 272, 1981 U.S. App. LEXIS 20552 (5th Cir. Miss. 1981).

In declining to follow Melikian v. Avent (ND Miss. 1969) 300 F Supp 516, the reviewing court held that the civil side of the Mississippi fee system did not comport with due process, in light of the record which supported the inference that creditors would file more frequently in the courts of the judges who tended to favor the plaintiffs, and where there was testimony to this effect, and further testimony to the affect that judges knew and understood this to be the case, and where the undisputed evidence showed that cases were unevenly distributed throughout the judges in the various counties. Brown v. Vance, 637 F.2d 272, 1981 U.S. App. LEXIS 20552 (5th Cir. Miss. 1981).

In view of the constitutional ordination that all courts shall be open and that every person shall have a remedy for any injury, and the fact that the constitution nowhere makes provision for cases of disqualification or total lack of a justice of the peace in a county supervisor's district, this section [Code 1942, § 1831], in providing that if there should not be a justice of the peace in the district in which any crime was committed qualified to try the accused, any justice of the peace of the county should have jurisdiction thereof, is valid. Farrar v. State, 191 Miss. 1, 2 So. 2d 146, 1941 Miss. LEXIS 121 (Miss. 1941).

2. Jurisdiction in general.

A county court, though having concurrent jurisdiction with a justice of the peace court over the crime of assault and battery, did not have jurisdiction to proceed with defendant's prosecution for that crime where the justice of the peace court had first acquired full and exclusive jurisdiction of the case and the case was still pending there when an affidavit charging defendant with the same crime was filed with the county court. Rhodes v. State, 335 So. 2d 907, 1976 Miss. LEXIS 1955 (Miss. 1976).

A justice of the peace is not civilly liable for acts performed by him within his jurisdiction, but liability may be imposed when he acts without his jurisdiction. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

Where there was a justice of peace qualified to try the defendant in the district where the offense of operating a motor vehicle while intoxicated was allegedly committed, a justice of peace of another district had no jurisdiction to try the case, and a judgment entered therein was a nullity. Travis v. State, 230 Miss. 578, 93 So. 2d 468, 1957 Miss. LEXIS 400 (Miss. 1957).

In the absence of any showing in the record that there was not a justice of peace in the district where the alleged crime was committed, qualified to try the defendant, the justice of peace of another district was without jurisdiction and therefore the circuit court acquired no jurisdiction and the supreme court alike acquired no jurisdiction. Winborn v. State, 213 Miss. 322, 56 So. 2d 885, 1952 Miss. LEXIS 368 (Miss. 1952).

One of two courts of concurrent jurisdiction may, by valid order of dismissal, relinquish its exclusive jurisdiction acquired by criminal prosecution being first instituted therein, so that the other court may proceed then with prosecution of same offense. Hegwood v. State, 206 Miss. 160, 39 So. 2d 865, 1949 Miss. LEXIS 250 (Miss. 1949).

Dismissal without prejudice, on motion of state, of proceeding against defendant in justice of the peace court for unlawful possession of intoxicating liquor does not prevent indictment of defendant for same offense in circuit court having concurrent jurisdiction. Hegwood v. State, 206 Miss. 160, 39 So. 2d 865, 1949 Miss. LEXIS 250 (Miss. 1949).

The rule that where concurrent jurisdiction is vested in two courts the court first acquiring jurisdiction should proceed with the trial and disposition of the case, is intended to prevent confusion and conflicts in jurisdiction, and to prevent a person from being twice tried for the same offense, and no defendant has the vested right to be tried in any particular court of concurrent jurisdiction. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

While justice of the peace court and the circuit court have concurrent jurisdiction of misdemeanors, whenever there is an indictment and arrest, in either court, jurisdiction is then exclusive; but until then, in the absence of any allegation and proof of fraud or collusion, either court may proceed. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Mere lodging of an affidavit charging unlawful possession of intoxicating liquor with a justice of the peace did not confer final and exclusive jurisdiction on such justice court so as to preclude the circuit court from indicting and trying the offender where no warrant for the offender's arrest had been issued by the justice of the peace prior to the indictment. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

An affidavit charging commission of a crime is essential to confer jurisdiction on a justice of the peace to try and punish the offender. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Mere fact that affidavit charging commission of a crime was made and lodged with justice of the peace while he was out of his court district attending circuit court at the county seat, did not deprive the justice of jurisdiction. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Where there is qualified justice of peace in district in which misdemeanor is committed, justice in no other district has jurisdiction; where defendants were charged with crime before justice having no jurisdiction, and charge was still pending, circuit court had jurisdiction of offense. Thompson v. State, 153 Miss. 593, 121 So. 275, 1929 Miss. LEXIS 61 (Miss. 1929).

A justice of the peace having jurisdiction of a misdemeanor takes exclusive jurisdiction thereof. Hampton v. State, 138 Miss. 196, 103 So. 10, 1924 Miss. LEXIS 237 (Miss. 1924).

The justice of the peace of the district in which the threats are made or in which occurs the hostile action has jurisdiction of the offense. Ford v. State, 96 Miss. 85, 50 So. 497, 1909 Miss. LEXIS 21 (Miss. 1909).

Fact that justice of the peace for a town is given power by municipal charter, which he would not otherwise have, to try violations of ordinances of the town does not limit him to criminal jurisdiction, the jurisdiction of justices of the peace being regulated by general law conferring both civil and criminal jurisdiction. Matthews v. Cotton, 83 Miss. 472, 35 So. 937, 1903 Miss. LEXIS 66 (Miss. 1903).

3. Territorial limits.

A cause of action for malicious prosecution was not stated in a declaration which did not allege that the defendant justice of the peace had any knowledge of the truth or falsity of the affidavit charging plaintiff with violation of Code 1942, § 2153 at the time of issuance of the warrant, did not allege that the justice of the peace had any financial interest in the money obtained by plaintiff when he issued the warrant, did not allege that the justice of the peace, at the time of issuing the warrant, had personal knowledge that the prosecution was being instituted for the collection of a civil debt, and did not allege that the justice of the peace did not have territorial jurisdiction of the offense charged in the affidavit. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

The jurisdiction of the justice of the peace over misdemeanors is confined to those committed within his district. Childres v. State, 136 Miss. 829, 101 So. 857, 1924 Miss. LEXIS 189 (Miss. 1924).

The criminal jurisdiction of a mayor as ex-officio justice is restricted by Code 1892, § 2420 [Code 1942, § 1831], to the corporate limits and an affidavit before him charging a misdemeanor to have been committed in the district in which the town is situated, but not averring that it was in the town, states an imperfect venue. Burnett v. State, 72 Miss. 994, 18 So. 432, 1895 Miss. LEXIS 54 (Miss. 1895).

4. Lack of qualified justice of peace in district.

One accused of misdemeanor committed in a supervisor's district in which there was no justice of the peace could be tried in the justice of the peace court of an adjoining district. Farrar v. State, 191 Miss. 1, 2 So. 2d 146, 1941 Miss. LEXIS 121 (Miss. 1941).

5. Waiver.

If a justice has jurisdiction of the subject-matter of a criminal prosecution, the defendant waives the question of the jurisdiction of his person by pleading "not guilty" and going to trial. Holley v. State, 74 Miss. 878, 21 So. 923, 1897 Miss. LEXIS 69 (Miss. 1897).

6. Particular offenses.

Defendant was indicted by a grand jury for felony driving under the influence, and the indictment vested jurisdiction of the matter solely with the circuit court, not the justice court, and there was no doubt that the circuit court properly retained subject matter jurisdiction over the case. Lyons v. State, 196 So. 3d 1131, 2016 Miss. App. LEXIS 470 (Miss. Ct. App. 2016).

A justice of the peace has no jurisdiction, other than to require bail for appearance in circuit court to await action of grand jury, on an affidavit charging a second offense of possessing a gambling device (Code 1942, § 2047). Ellis v. State, 203 Miss. 330, 33 So. 2d 837, 1948 Miss. LEXIS 273 (Miss. 1948).

Justice of the peace had jurisdiction of defendant charged with selling liquor and of subject-matter where offense was misdemeanor and sentence was by fine and imprisonment in county jail. Hitt v. State, 149 Miss. 718, 115 So. 879, 1928 Miss. LEXIS 77 (Miss. 1928).

Under this section [Code 1942, § 1831] a justice has no authority to bind a defendant over to appear before the circuit court to await the action of the grand jury on a charge of conspiracy to rob, but he should have himself disposed of the case, and a bond given by accused to so appear was void. Smith v. State, 86 Miss. 315, 38 So. 319, 1905 Miss. LEXIS 31 (Miss. 1905).

7. Disposition of cases.

Where a justice of the peace continues a criminal case to a definite date the case cannot be dismissed in vacation without the consent of the defendant. Chandler v. State, 140 Miss. 524, 106 So. 265, 1925 Miss. LEXIS 287 (Miss. 1925).

A defendant being charged before a justice of the peace for a felony, the justice of the peace must dismiss or transfer the cause where it develops that the offense was committed in another district and is only a misdemeanor. Ivy v. State, 141 Miss. 877, 106 So. 111, 1925 Miss. LEXIS 216 (Miss. 1925).

A justice of the peace must finally dispose of misdemeanors where he has jurisdiction and cannot bind over the defendant for the circuit court thereunder. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

A justice of the peace is without authority to bind a defendant over to appear before the circuit court to await the action of the grand jury on a charge of having committed a misdemeanor. Smith v. State, 86 Miss. 315, 38 So. 319, 1905 Miss. LEXIS 31 (Miss. 1905).

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Justices of the Peace §§ 10 et seq., 35.

Practice References.
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§ 99-33-2. Commencing criminal cases; duties of clerk and judge; penalty for failure of judge to comply.

(1) Anyone bringing a criminal matter in the justice court shall lodge the affidavit with the judge or clerk of the justice court. The clerk shall record all affidavits and shall, as far as practicable, assign criminal cases to the justice court judges in the county on a rotating basis to ensure equal distribution of the cases among the judges of the county; however, in all counties in which the courtrooms provided by the county for use of the justice court judges are located in more than one (1) place in the county, the clerk, in addition to assigning cases to the judges on a rotating basis, may also assign a courtroom for each case, such assignment may be made based upon the proximity of the courtroom to the defendant's residence or place of business.

(2) When the case has been recorded and assigned and all necessary process issued, the clerk shall, within two (2) working days, forward certified copies of all documents pertaining to the case to the justice court judge to which the case is assigned for further processing.

(3) Within forty-eight (48) hours of the receipt of any criminal affidavit lodged with a justice court judge, the justice court judge shall forward such affidavit and all documents pertaining thereto to the clerk of the justice court for the recording of such affidavit and documents and the assignment of the case as provided in subsection (1) of this section. Any justice court judge who willfully fails or refuses to comply with this subsection shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not more than six (6) months, or both.

HISTORY: Laws, 1981, ch. 471, § 14; Laws, 1982, ch. 423, § 11; Laws, 1991, ch. 551, § 2, eff from and after October 1, 1991.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Justice court clerk assigning civil and criminal cases to justice court judges in accordance with this section, see § 9-11-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for misdemeanor and felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Justice court judge did not interfere with rotation of cases so as to create forum shopping or violate judicial canons, where it was practice of judges to handle cases for each other when the other was unavailable and statutes did not prohibit judges from handling each other's cases when a judge is unavailable. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

All cases, civil and criminal, shall be assigned by clerk to justice court judges of county in manner provided in this section. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Subsection (3) of this section provides that justice court judge must, within forty-eight hours, forward any affidavit to justice court clerk who shall record affidavit and assign case to proper judge pursuant to rotation. Ferguson, June 9, 1993, A.G. Op. #93-0331.

This section requires justice court clerk to assign cases to judges on rotation basis; however, as for setting docket, judges have discretion as to cases assigned; judges may establish procedure whereby clerk sets docket. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Based on subsection (2) of this section, the clerk must forward a certified copy of the case file to the judge within two days after the case has been recorded and assigned and all necessary process has been issued. If there are any significant additions or changes in the case file prior to the court date, those additions or changes should be forwarded to the judge prior to court. Maness, June 21, 1996, A.G. Op. #96-0407.

Upon presentation of an affidavit charging someone with a crime, the justice court judge must determine from the affidavit and other evidence received under oath whether there is probable cause to believe that a crime was committed and that the defendant committed the offense, and if so, the judge must issue a warrant, but if not, the judge may refer the matter to the sheriff for further investigation. Broadhead, July 3, 1997, A.G. Op. #97-0389.

To commence an action in justice court pursuant to the statute, an officer must file or lodge the affidavit with the justice court in the county where the cause accrued and the case is to be heard. Blackney, May 31, 2002, A.G. Op. #02-0274.

§ 99-33-3. Procedures in criminal cases; minimum fine which may be imposed.

On affidavit of the commission of any crime, of which the justice court has jurisdiction, lodged with the justice court, the clerk shall, upon direction by a justice court judge of the county, issue a warrant for the arrest of the offender returnable forthwith or on a certain day to be named. The clerk, or the justice court judge to whom the case is assigned, shall issue subpoenas for witnesses as in civil cases, and the justice court judge may enter a conviction as provided in Section 99-19-3, or shall try and dispose of the case according to law; and, on conviction, shall order such punishment to be inflicted as the law provides; provided, however, that no fine imposed shall be in an amount less than Fifteen Dollars ($15.00).

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 2(8); 1857, ch. 64, art. 329; 1871, § 1322; 1880, § 2217; 1892, § 2421; 1906, § 2750; Hemingway's 1917, § 2249;

1930, § 2098; 1942, § 1832; Laws, 1966, ch. 354, § 1; Laws, 1974, ch. 352; Laws, 1982, ch. 423, § 12; Laws, 2002, ch. 320, § 2, eff from and after July 1, 2002.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Convictions obtained only by verdict or guilty plea – no punishment without legal conviction – waiver of right to trial and payment of fine in lieu thereof without appearing in court for traffic, motor vehicle, and game and fish misdemeanor violations, see § 99-19-3.

Imposition of standard state assessment in addition to court imposed fines or other penalties for any misdemeanor, see § 99-19-73.

Right of appeal, see §§ 99-35-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Affidavit.
2. Trial and disposition.
3. Judgment.
4. Waiver.
5. Binding over for grand jury.

1. Affidavit.

A cause of action for malicious prosecution was not stated in a declaration which did not allege that the defendant justice of the peace had any knowledge of the truth or falsity of the affidavit charging plaintiff with violation of Code 1942, § 2153 at the time of issuance of the warrant, did not allege that the justice of the peace had any financial interest in the money obtained by plaintiff when he issued the warrant, did not allege that the justice of the peace, at the time of issuing the warrant, had personal knowledge that the prosecution was being instituted for the collection of a civil debt, and did not allege that the justice of the peace did not have territorial jurisdiction of the offense charged in the affidavit. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

Justice of the peace is not required under this section [Code 1942, § 1832] to mark an affidavit in support of a search warrant "filed" before the search warrant can be issued. Wince v. State, 206 Miss. 189, 39 So. 2d 882, 1949 Miss. LEXIS 253 (Miss. 1949).

An affidavit filed before a police justice charging wilful and unlawful possession of intoxicating beer contrary to the laws and ordinances of the city was insufficient to charge an offense since the state law permitted possession of beer for personal consumption. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726, 1948 Miss. LEXIS 261 (Miss. 1948).

An affidavit charging commission of a crime is essential to confer jurisdiction on a justice of the peace to try and punish the offender. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Mere fact that affidavit charging commission of a crime was made and lodged with justice of the peace while he was out of his court district attending circuit court at the county seat, did not deprive the justice of jurisdiction. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Mere lodging of an affidavit charging unlawful possession of intoxicating liquor with a justice of the peace did not confer final and exclusive jurisdiction on such justice court so as to preclude the circuit from indicting and trying the offender where no warrant for the offender's arrest had been issued by the justice of the peace prior to the indictment. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

The affidavit is a prerequisite to prosecution for misdemeanor; it is the foundation of the jurisdiction of the justice of the peace and the court has no jurisdiction without it. Bramlette v. State, 193 Miss. 24, 8 So. 2d 234, 1942 Miss. LEXIS 95 (Miss. 1942).

Where defendant was tried and convicted by a justice of the peace upon what purported to be an affidavit charging unlawful possession of intoxicating liquor, such affidavit being neither signed nor sworn to until after conviction and appeal taken therefrom, defendant was tried without due process, and on appeal the circuit court could not, by allowing the belated affidavit to stand, at once retroactively bestow upon and borrow from the justice of the peace its jurisdiction. Bramlette v. State, 193 Miss. 24, 8 So. 2d 234, 1942 Miss. LEXIS 95 (Miss. 1942).

A defendant convicted of a misdemeanor will not be released on habeas corpus because of defects in the affidavit. Ex parte Grubbs, 79 Miss. 358, 30 So. 708, 1901 Miss. LEXIS 64 (Miss. 1901).

An affidavit is essential to confer jurisdiction to try and punish an offender. Bigham v. State, 59 Miss. 529, 1882 Miss. LEXIS 151 (Miss. 1882).

2. Trial and disposition.

A justice of the peace must finally dispose of misdemeanors where he has jurisdiction and cannot bind over the defendant for the circuit court thereunder. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

3. Judgment.

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trials in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869, 1969 U.S. Dist. LEXIS 8348 (S.D. Miss. 1969), dismissed, Hall v. Baum, 397 U.S. 93, 90 S. Ct. 818, 25 L. Ed. 2d 79, 1970 U.S. LEXIS 2741 (U.S. 1970), dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80, 1970 U.S. LEXIS 2742 (U.S. 1970).

Where a justice acquires jurisdiction of the person of a defendant charged with a misdemeanor, his judgment cannot be collaterally attacked. Ex parte Grubbs, 79 Miss. 358, 30 So. 708, 1901 Miss. LEXIS 64 (Miss. 1901).

The failure of a justice for several days after a trial and conviction and the adjournment of his court, to enter judgment against the accused, being merely clerical, affords no ground for the offender's discharge. Lurenberger v. State, 74 Miss. 379, 21 So. 134 (Miss. 1896).

4. Waiver.

If a justice of the peace has jurisdiction of the subject-matter of a criminal prosecution, the defendant waives the question of the jurisdiction of his person by pleading "not guilty" and going to trial. Holley v. State, 74 Miss. 878, 21 So. 923, 1897 Miss. LEXIS 69 (Miss. 1897).

5. Binding over for grand jury.

A justice has no authority to bind a defendant over to appear before the circuit court to await the action of the grand jury on a charge of conspiracy to rob, but he should have himself disposed of the case, and a bond given by accused to so appear was void. Smith v. State, 86 Miss. 315, 38 So. 319, 1905 Miss. LEXIS 31 (Miss. 1905).

A defendant charged with a misdemeanor who has been bound over to the circuit court and imprisoned for default in making bond, cannot maintain habeas corpus to have his case remanded to the magistrate for trial. Ex parte Smith, 79 Miss. 373, 30 So. 710, 1901 Miss. LEXIS 67 (Miss. 1901).

Where a defendant is charged with assault and battery and it appears that the injured party died from the defendant's blows, it is not improper but wise to bind the defendant over to await the action of the grand jury. Ex parte Smith, 79 Miss. 373, 30 So. 710, 1901 Miss. LEXIS 67 (Miss. 1901).

OPINIONS OF THE ATTORNEY GENERAL

Justice court clerk has both power and duty to issue witness subpoenas in criminal and civil cases pursuant to Miss. Code Section 99-33-3. Ferguson, June 9, 1993, A.G. Op. #93-0331.

The duty of the clerk of the justice court to direct the sheriff of his county and his deputies to execute any process of the justice court that has not been returned by a constable within ten working days applies to civil process; a justice court is not required to issue criminal process, i.e., arrest warrants, to constables for a ten day period before directing such warrants to a sheriff's department. Allgood, January 23, 1998, A.G. Op. #98-0011.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Justices of the Peace §§ 23 et seq.

§ 99-33-5. Subpoena may issue to any county.

A justice of the peace may issue a subpoena for a witness to any county, in a criminal case, and enforce obedience thereto.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 2(6); 1857, ch. 64, art. 334; 1871, § 2827; 1880, § 3117; 1892, § 2429; 1906, § 2758; Hemingway's 1917, § 2257; 1930, § 2106; 1942, § 1840.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Fees of justice of the peace, see § 25-7-25.

Issuance of subpoena by conservator of the peace, see § 99-15-9.

§ 99-33-7. Appearance bond may be taken.

It is lawful for any officer having a person in custody by virtue of a warrant of a justice court judge, in a case in which the judge has a final jurisdiction, to take bond with sufficient sureties, in a sum of not less than Fifty Dollars ($50.00), nor more than One Thousand Dollars ($1,000.00), except for the violation of any of the criminal statutes of Mississippi prohibiting the sale and possession of intoxicating liquors, when the bond shall not be less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) conditioned for the appearance of such person on the return-day of the writ before the justice court judge before whom the warrant is returnable, and to fix the amount of the bond, which shall be returned to the judge and be filed and proceeded on by him in a case of forfeiture, if for not more than Two Hundred Dollars ($200.00), as in like cases in the circuit court, as near as may be. A justice court judge before whom any person is brought for trial may take bond or recognizance in such like sum as he may affix, for such person, or may authorize the sheriff or constable to take bond of him for his appearance on adjournment from time to time, and from day to day, or to a subsequent day, for trial, and to be proceeded on in case of forfeiture as provided above. When a bond of recognizance shall exceed in its penalty One Thousand Dollars ($1,000.00) and be forfeited, the justice court judge shall return the bond or a true copy of the recognizance to the circuit court, with his certificate of the forfeiture; and the circuit court shall enter judgment nisi thereon, and thereafter proceed as if the same had been for appearance in that court.

HISTORY: Codes, 1871, § 1325; 1880, § 2220; 1892, § 2423; 1906, § 2752; Hemingway's 1917, § 2251; 1930, § 2100; 1942, § 1834; Laws, 1924, ch. 247; Laws, 1991, ch. 323, § 1, eff from and after July 1, 1991.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Bail generally, see §§ 99-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

A sheriff has the right, by necessary implication, to fix the amount of bail of a person arrested without a warrant for a misdemeanor committed in his presence and to determine the sufficiency of the bail bond tendered to him. Sheffield v. Reece, 201 Miss. 133, 28 So. 2d 745, 1947 Miss. LEXIS 378 (Miss. 1947).

Bond for the appearance of accused in bastardy proceedings erroneously accepted by sheriff, since justice of the peace cannot finally dispose of a bastardy case, procured the release of the accused and the justice of the peace had jurisdiction to take a forfeiture thereon for that reason and so certify to the circuit court for its final judgment thereon as required by this section [Code 1942, § 1834], the bond being in excess of $200, and, being valid and binding as having obtained the release of accused, the circuit court had power to enter judgment against principal and sureties. Boykin v. West, 183 Miss. 567, 184 So. 624, 1938 Miss. LEXIS 270 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

Under this section, the sheriff has the authority to set and approve bail, where not already fixed and approved by a judicial officer, for persons arrested for misdemeanor offenses. Welch, August 16, 1995, A.G. Op. #95-0452.

In addition to this section, §§ 19-25-67 and 99-5-15 give a sheriff the authority to take or approve bonds. Tolar, Oct. 31, 2003, A.G. Op. 03-0571.

§ 99-33-9. Trial by jury.

A defendant in a criminal case before a justice court judge where the potential period of incarceration is more than six (6) months in jail, in like manner as in civil cases, may demand a jury, and thereupon the justice shall proceed as in other cases. If the potential of incarceration is less than six (6) months in jail, there shall be no jury trial.

HISTORY: Codes, 1871, § 1330; 1880, § 2226; 1892, § 2428; 1906, § 2757; Hemingway's 1917, § 2256; 1930, § 2105; 1942, § 1839; Laws, 2008, ch. 319, § 8, eff July 24, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.).

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the 'Justice Court Reform Act of 2008.' "

On July 24, 2008, the United States Attorney General interposed no objection under

Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 319, § 8.

Cross References — Right of appeal, see §§ 99-35-1 et seq.

JUDICIAL DECISIONS

1. In general.

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trial in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869, 1969 U.S. Dist. LEXIS 8348 (S.D. Miss. 1969), dismissed, Hall v. Baum, 397 U.S. 93, 90 S. Ct. 818, 25 L. Ed. 2d 79, 1970 U.S. LEXIS 2741 (U.S. 1970), dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80, 1970 U.S. LEXIS 2742 (U.S. 1970).

OPINIONS OF THE ATTORNEY GENERAL

A justice court judge must grant a jury trial to a criminal defendant if the defendant requests one in a timely manner. Bush, Oct. 25, 2002, A.G. Op. #02-0614.

A criminal defendant in justice court is entitled to a jury trial pursuant to this section. Shirley, Apr. 30, 2004, A.G. Op. 04-0181.

The costs of a jury trial can be assessed to a defendant who is convicted. Shirley, Apr. 30, 2004, A.G. Op. 04-0181.

A justice court may deny a jury trial to a criminal defendant if the defendant does not make the request for a jury trial in a timely manner. Shirley, Apr. 30, 2004, A.G. Op. 04-0181.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury §§ 41 et seq.

CJS.

50A C.J.S., Juries §§ 130 et seq.

§ 99-33-11. Repealed.

Repealed by Laws, 1979, ch. 501, § 4, eff from and after April 18, 1979.

§ 99-33-11. [Codes, 1871, § 1323; 1880, § 2218; 1892, § 2422; 1906, § 2751; Hemingway's 1917, § 2250; 1930, § 2099; 1942, § 1833]

Editor's Notes — Former § 99-33-11 was entitled: Convict committed until fine and costs paid.

§ 99-33-13. Procedure when accused is guilty of felony; remand.

If on the trial of any criminal case the justice court judge discover that it is a felony, and not a misdemeanor, of which the accused has been guilty, he shall not punish the offender nor render any judgment finally disposing of the case, but shall require him to give bail for his appearance in the circuit court, unless the felony be not bailable, in which case the justice shall commit him without bail. A circuit court grand jury may remand a case to justice court to be tried as a misdemeanor after finding that the felony charge presented should be remanded with its bond to justice or municipal court to be tried as a misdemeanor.

HISTORY: Codes, 1880, § 2221; 1892, § 2424; Laws, 1906, § 2753; Hemingway's 1917, § 2252; Laws, 1930, § 2101; Laws, 1942, § 1835; Laws, 2007, ch. 495, § 2, eff from and after July 1, 2007.

Cross References — Definition of term "felony," see § 1-3-11.

Acquittal or conviction by justice of the peace of misdemeanor not barring prosecution for felony in same matter, see § 99-11-35.

Power of conservator of peace to bind over persons charged with crimes and offenses to circuit court, see § 99-15-3.

JUDICIAL DECISIONS

1. In general.

Where a defendant is charged with an assault and battery and it appears that the death of the injured party resulted from defendant's blows, it is not improper but wise for the magistrate to bind the defendant over to await the action of the grand jury. Ex parte Smith, 79 Miss. 373, 30 So. 710, 1901 Miss. LEXIS 67 (Miss. 1901).

The affidavit charging an offense serves to procure the arrest of the accused and if the justice believe him guilty of a felony, he must bind him over and the mittimus will be valid although the affidavit only charge a misdemeanor. Ex parte Burke, 58 Miss. 50, 1880 Miss. LEXIS 91 (Miss. 1880).

OPINIONS OF THE ATTORNEY GENERAL

While county court has concurrent jurisdiction over criminal cases that are filed in justice court, there is a specific provision to transfer a case from justice court to county court; if the need arises, a criminal case may be dismissed from justice court prior to trial and then refiled in county court. Bush, Oct. 25, 2002, A.G. Op. #02-0614.

§ 99-33-15. Authority to sentence misdemeanant to imprisonment on weekends or other nonworking hours.

Upon conviction of any person of a misdemeanor in a justice court of this state, the justice court judge shall be authorized, in his discretion, to sentence such person to:

(a) A period of time in jail to be served either on weekends only;

(b) Other periods of time during the week wherein such offender may not be engaged in gainful employment; or

(c) A specified number of days in jail with a provision for the release of such offender for the purpose of engaging in gainful employment at such times as the offender is actually gainfully employed, whether self-employed or otherwise.

In addition, the court may, in its discretion, sentence any convicted person to split periods of incarceration in lieu of serving the sentence of imprisonment all in one (1) period.

HISTORY: Laws, 1986, ch. 373, eff from and after July 1, 1986.

Cross References — Intermittent sentences for conviction of misdemeanor by municipal court, see § 21-23-20.

RESEARCH REFERENCES

Am. Jur.
21A Am. Jur. 2d, Criminal Law §§ 736 et seq.

CJS.
24 C.J.S., Criminal Law §§ 1995 et seq.

§ 99-33-17. Transfer of criminal case from justice court to municipal court in case of conflict.

A justice court judge shall not dismiss a criminal case but may transfer the case to a municipal court within the county if the justice court judge is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction is proper in the municipal court. Upon transfer of any such case, the justice court judge shall give the justice court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the municipal court by certified mail or to instruct the arresting officer to deliver such documents and records to the municipal court. There shall be no court costs charged for the transfer of the case to the municipal court.

HISTORY: Laws, 1991, ch. 322, § 2, eff from and after July 1, 1991.

Cross References — Authority of municipal court judge to transfer criminal case to justice court, see § 21-23-7.

OPINIONS OF THE ATTORNEY GENERAL

While county court has concurrent jurisdiction over criminal cases that are filed in justice court, there is a specific provision to transfer a case from justice court to county court; if the need arises, a criminal case may be dismissed from justice court prior to trial and then refiled in county court. Bush, Oct. 25, 2002, A.G. Op. #02-0614.

CHAPTER 35.

APPEALS

Article 1.	Appeals to Circuit Courts.	99-35-1
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ARTICLE 1.

APPEALS TO CIRCUIT COURTS.

Sec.	
99-35-1.	Right of appeal; requirement to post bond; trial de novo on appeal.
99-35-3.	Appearance bond.
99-35-5.	Sheriff empowered to take appeal bond from misdemeanant convicted in justice court.
99-35-7.	Appeals without bond or supersedeas.
99-35-9.	Papers to be transmitted to circuit court clerk.
99-35-11.	Amendment of affidavit, pleading, or proceedings.
99-35-13.	Remittance of fines and forfeitures.

§ 99-35-1. Right of appeal; requirement to post bond; trial de novo on appeal.

In all cases of conviction of a criminal offense against the laws of the state by the judgment of a justice court, or by a municipal court, for the violation of an ordinance thereof, an appeal may be taken within forty (40) days from the date of such judgment of conviction to the county court of the county, in counties in which a county court is in existence, or the circuit court of the county, in counties in which a county court is not in existence, which shall stay the judgment appealed from. Any person appealing a judgment of a justice court or a municipal court under this section shall post bond for court costs relating to such appeal. The amount of such bond shall be determined by the justice court judge or municipal judge, payable to the state in an amount of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00).

On appearance of the appellant in the circuit court the case shall be tried anew and disposed of as other cases pending therein.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 14(4); 1857, ch. 58, art. 23; 1871, § 1335; 1880, § 2355; 1892, § 86; 1906, § 87; Hemingway's 1917, § 69; 1930, § 68; 1942, § 1202; Laws, 1956, ch. 216; Laws, 1968, ch. 308, § 1; Laws, 1988, ch. 416, § 1; Laws, 1989, ch. 403, § 1, eff from and after July 1, 1989.

Cross References — Appeals in civil cases generally, see §§ 11-51-3 et seq.

Criminal practice in justice of the peace courts, see §§ 99-33-1 et seq.

Appearance bond, see § 99-35-3.

Remittance of fines and forfeitures, see § 99-35-13.

Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Appeals in civil cases generally, see §§ 11-51-3 et seq.

Appeals as of right, see Miss. Uniform Rules of Circuit and County Court Practice, Rule 12.02 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction of circuit court.
3. Irregularities or omissions in record, effect.
4. Persons entitled to appeal.
5. —Plea of guilty, effect.
6. Time for appeal.
7. Effect of appeal.
8. Questions for review.
9. Proceedings on appeal.
10. —Amendment.
11. —Evidence.
12. —Judgment.
13. Dismissal of appeal.

1. In general.

Although there may not have been a signed judgment on record in justice court at that time, any defect in the judgment of the justice court was harmless because defendant appealed and received a jury trial de novo in circuit court. Stidham v. State, 750 So. 2d 1238, 1999 Miss. LEXIS 372 (Miss. 1999).

A circuit court has no authority to judicially create a right of appeal from an administrative agency in the absence of clear statutory authority therefor. Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trials in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869, 1969 U.S. Dist. LEXIS 8348 (S.D. Miss. 1969), dismissed, Hall v. Baum, 397 U.S. 93, 90 S. Ct. 818, 25 L. Ed. 2d 79, 1970 U.S. LEXIS 2741 (U.S. 1970), dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80, 1970 U.S. LEXIS 2742 (U.S. 1970).

A petition for removal of a state case to federal district court, filed after appeal from a conviction in a police court and before a de novo trial in the circuit court, was filed before trial within the meaning of 28 USCS § 1446(c). Calhoun v. Meridian, 355 F.2d 209, 1966 U.S. App. LEXIS 7391 (5th Cir. Miss. 1966).

Appeals from justices' courts to the circuit court in criminal cases are governed by this section [Code 1942, § 1202], authorizing such appeals upon the execution of a bond to appear at "the next term of the circuit court," meaning the term of said court next after the appeal is granted. Ex parte Grubbs, 80 Miss. 288, 31 So. 741, 1902 Miss. LEXIS 243 (Miss. 1902).

If a justice enters his judgment on a loose piece of paper and after adjournment transfers the entry to a docket, the judgment is not invalid. Holley v. State, 74 Miss. 878, 21 So. 923, 1897 Miss. LEXIS 69 (Miss. 1897).

A petition for habeas corpus complaining that relator had not been allowed to appeal from the judgment of a justice, but was wrongfully deprived of his liberty, must show that such an appeal was sought and that sufficient bond was tendered. Ex parte Gibson, 12 So. 209 (Miss. 1892).

2. Jurisdiction of circuit court.

Circuit court lacked jurisdiction over defendant's appeal of his municipal court convictions under Miss. Code Ann. § 99-35-1 because defendant failed to appear for his circuit court date despite receiving proper notice and did not file a timely motion to restore his cases to the docket. Raspberry v. City of Aberdeen, 964 So. 2d 1211, 2007 Miss. App. LEXIS 618 (Miss. Ct. App. 2007).

Circuit court erred in issuing a writ of mandamus under Miss. R. App. P. 21 because the justice court judge's decisions to deny any further continuance and to proceed to trial on the misdemeanor DUI charge in petitioner's absence pursuant to

Miss. Code Ann. § 99-17-9 were discretionary and appeals from the justice court to the circuit court required a trial de novo, Miss. Code Ann. § 99-35-1 and Miss. Unif. Cir. & County Ct. Prac. R. 12.02; thus, the writ of mandamus was the improper procedural tool to remedy petitioner's grievances regarding the denial of a continuance and proceeding to trial in petitioner's absence, and the grant of the writ of mandamus was in error pursuant to Miss. Code Ann. § 11-41-1. In re Chisolm, 837 So. 2d 183, 2003 Miss. LEXIS 42 (Miss. 2003).

There is no statute authorizing an appeal from anything other than a final order of the Workers' Compensation Commission, and therefore a circuit court may not grant an appeal from an interlocutory order of the Commission. Thus, judgments of circuit courts emanating from appeals from interlocutory orders of the Commission were nullities. Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

The provisions of § 99-19-3 for the conviction of a person upon "a confession of his guilt in open court or by admitting the truth of the charge against him" apply only when the confession or admission is made to the charge for which the defendant is then being tried. Thus, in a prosecution of two defendants under this section for spotlighting deer following their conviction in a justice of the peace court, the circuit court erred in convicting them of unlawfully hunting from a public road based upon admissions or confessions made during trial where the only offense for which they were on trial was that of spotlighting deer. Sanchez v. State, 385 So. 2d 624, 1980 Miss. LEXIS 2028 (Miss. 1980).

Filing of an appeal transcript in circuit court then in session did not confer authority on that court to dispose of the case until its next term where the bond conditioned the defendant's appearance before the circuit court at the next term after the appeal should be taken. Ball v. State, 202 Miss. 405, 32 So. 2d 195, 1947 Miss. LEXIS 291 (Miss. 1947).

Where prosecution originated in justice court, record should show judgment imposing sentence which is required to confer jurisdiction on circuit court on appeal. Gilmer v. State, 157 Miss. 622, 128 So. 773, 1930 Miss. LEXIS 349 (Miss. 1930).

Circuit court has no jurisdiction of prosecuting witness taxed with cost. Town of Lumberton v. Peyton, 143 Miss. 777, 109 So. 740, 1926 Miss. LEXIS 320 (Miss. 1926).

Transcript of the proceedings before the justice of the peace is essential to the jurisdiction of the circuit court. Dorsey v. State, 141 Miss. 600, 106 So. 827, 1926 Miss. LEXIS 464 (Miss. 1926).

Where a justice of the peace had no jurisdiction to try misdemeanor, the circuit court had no power on appeal to try it, and the question of jurisdiction may be raised at any time. Ivy v. State, 141 Miss. 877, 106 So. 111, 1925 Miss. LEXIS 216 (Miss. 1925).

Circuit court has no original jurisdiction to try misdemeanor, except by indictment of a grand jury, and where no indictment is shown in the record, but an affidavit, and no trial in the justice court, with proper appeal proceedings, conviction will be reversed. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

Justice of the peace has no authority to waive trial for misdemeanor and bind the defendant over to await action of grand jury, unless the charge preferred may be punished as a felony under certain conditions. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

On appeal, state must prove misdemeanor committed within jurisdiction of justice of peace who tried case. Slaton v. State, 134 Miss. 419, 98 So. 838, 1924 Miss. LEXIS 264 (Miss. 1924); Crosby v. State, 136 Miss. 305, 101 So. 437, 1924 Miss. LEXIS 136 (Miss. 1924).

3. Irregularities or omissions in record, effect.

Failure of justice to properly enter a judgment rendered by him in a bastardy proceeding, discharging defendant, is a mere irregularity of which defendant cannot complain in the circuit court. Crum v. Brock, 136 Miss. 858, 101 So. 704, 1924 Miss. LEXIS 174 (Miss. 1924).

A defendant upon appeal to the circuit court cannot dismiss the prosecution because of irregularity in its transfer by the mayor before whom the affidavit was made to the justice of the peace who tried him, or because of the want of an order on the mayor's docket making such transfer. Holley v. State, 74 Miss. 878, 21 So. 923, 1897 Miss. LEXIS 69 (Miss. 1897).

4. Persons entitled to appeal.

A person who has been convicted in a justice of the peace or police court has a right to be heard in the circuit court, although such judgment may have been executed. Little v. Wilson, 189 Miss. 825, 199 So. 72, 1940 Miss. LEXIS 165 (Miss. 1940).

One convicted of unlawful possession of intoxicating liquor, whose sentence was suspended during good behavior on payment of $50, was, on a subsequent revocation of his suspension, entitled to appeal from the judgment in the police justice court, notwithstanding the payment of $50 on the fine there imposed. Little v. Wilson, 189 Miss. 825, 199 So. 72, 1940 Miss. LEXIS 165 (Miss. 1940).

One charged with vagrancy and required by a justice of the peace to give bond for good behavior or be committed to jail under Code 1906, § 3427 may appeal to the circuit court. Jones v. State, 70 Miss. 398, 12 So. 710, 1892 Miss. LEXIS 135 (Miss. 1892).

5. —Plea of guilty, effect.

Circuit court erred in finding that defendant was not entitled to a trial de novo following a guilty plea to careless driving and DUI in a justice court where defendant was entitled to a trial de novo even though defendant pled guilty. Fowler v. State, 981 So. 2d 1061, 2008 Miss. App. LEXIS 290 (Miss. Ct. App. 2008).

Pursuant to Miss. Code Ann. § 99-35-1, defendant was entitled to take her appeal to the circuit court and be granted a trial de novo, even though she pleaded guilty in the justice court; pleading guilty in justice court did not estop defendant from appealing to the circuit court. Jones v. State, 972 So. 2d 579, 2008 Miss. LEXIS 25 (Miss. 2008).

A plea of guilty and payment of the fine and costs imposed in justice of the peace court does not bar the defendant from taking an appeal to circuit court and there having a trial de novo. Ball v. State, 202 Miss. 405, 32 So. 2d 195, 1947 Miss. LEXIS 291 (Miss. 1947).

An appeal may be had to the circuit court, or to the county court where there is one, and a trial there had de novo from a conviction in the court of a justice of the peace or police justice, even though the defendant may there have pleaded guilty. Little v. Wilson, 189 Miss. 825, 199 So. 72, 1940 Miss. LEXIS 165 (Miss. 1940).

The accused is not barred from appealing by having pleaded guilty. Neblett v. State, 75 Miss. 105, 21 So. 799, 1897 Miss. LEXIS 100 (Miss. 1897); Jenkins v. State, 96 Miss. 461, 50 So. 495, 1910 Miss. LEXIS 145 (Miss. 1910).

6. Time for appeal.

Circuit court did not err in dismissing defendant's appeal as untimely where, although Miss. Code Ann. § 99-35-1 allowed a person adjudged guilty of a criminal offense by a justice court to appeal to circuit court within forty days of such judgment of conviction, Miss. Unif. Cir. & County Ct. Prac. R. 12.02A allowed only thirty days for an appeal; any statute that conflicted with a rule established by the Supreme Court was void, and Rule 12.02A took precedence. Murray v. State, 870 So. 2d 1182, 2004 Miss. LEXIS 240 (Miss. 2004).

Neither this section nor [former] Rule 7.03, Miss. Unif. Crim. R. Cir. Ct. Prac. require a defendant to file an appeal bond within 40 days of conviction for an appeal from a municipal court to a circuit court, as neither specifies a time frame in which a defendant is required to post a bond; thus, a defendant's filing of an appeal bond 43 days after his conviction was not untimely. Sanchez v. City of Picayune, 656 So. 2d 92, 1995 Miss. LEXIS 259 (Miss. 1995).

An appeal to the circuit court by a defendant who was convicted in municipal court of driving while intoxicated was properly dismissed where the notice of appeal and appeal bond were filed one day after the running of the 40-day time limit, in spite of the defendant's argument that there was no prejudice to the state of Mississippi or any other party by the delay in the filing of the notice of appeal and appeal bond; to appeal from a municipal court to the circuit court in a criminal case, the appeal must be brought within 40 days of the entry of judgment against the defendant. Wheat v. City of Picayune, 631 So. 2d 141, 1994 Miss. LEXIS 1 (Miss. 1994).

An appeal to the circuit court can be prosecuted at any time after conviction, even though the prisoner be in the hands of the convict contractor. Smith v. Boykin, 61 Miss. 110, 1883 Miss. LEXIS 81 (Miss. 1883).

7. Effect of appeal.

Prosecution of defendant for felony manslaughter following his invocation of statutory right to trial de novo appeal of misdemeanor convictions violated due process where felony prosecution was based on same conduct as misdemeanor convictions. Thigpen v. Roberts, 468 U.S. 27, 104 S. Ct. 2916, 82 L. Ed. 2d 23, 1984 U.S. LEXIS 127 (U.S. 1984).

One appealing a conviction from the justice court to the circuit court stands there for trial de novo as defendant and occupies in that court the same attitude of a defendant as he did in the justice court and as such has no right to dismiss the appeal with procedendo. Thigpen v. State, 206 Miss. 87, 39 So. 2d 768, 1949 Miss. LEXIS 244 (Miss. 1949).

The appeal supersedes, but does not vacate the judgment of the justice. Ex parte Caldwell, 62 Miss. 774, 1885 Miss. LEXIS 144 (Miss. 1885).

8. Questions for review.

Question of justice's qualification must be presented in justice's court when such question is raised therein to be considered on appeal to circuit court. Arnold v. State, 149 Miss. 738, 115 So. 885, 1928 Miss. LEXIS 78 (Miss. 1928).

9. Proceedings on appeal.

In a prosecution for driving under the influence, enhanced 9-month sentences received by the defendants after they sought a trial de novo in the circuit court were not improper, even though the defendants were originally tried and sentenced in municipal court under § 21-13-19 which provides for a maximum penalty of 6 months' incarceration; when the defendants filed their appeals for trial de novo in the circuit court, they took the chance that the penalties would be greater than allowed by § 21-13-19 since the actions were brought under § 63-11-30(1)(c). Fisher v. Eupora, 587 So. 2d 878, 1991 Miss. LEXIS 669 (Miss. 1991).

Defendant who appeals to Circuit Court from Justice Court conviction and sentence of fine of $269.50 and imprisonment of 90 days in county jail, with jail sentence suspended for one year, and who is again convicted in Circuit Court, may be sentenced by Circuit Court to pay fine of $350 and to serve 6 months in county jail, with 5 ½ months of jail sentence suspended. Smith v. State, 463 So. 2d 1033, 1984 Miss. LEXIS 2066 (Miss. 1984).

Where accused did not appear at a time set by the circuit court for trial of his appeal from justice of the peace court, he failed to prosecute his appeal and had no right to demand that the circuit court pass upon the question of guilt. Murphy v. State, 223 Miss. 290, 78 So. 2d 342, 1955 Miss. LEXIS 379 (Miss. 1955).

On appeal to the circuit court, the latter does not ordinarily sit as a court of review merely, but the appeal supersedes the judgment of the court of the justice of the peace, and the case becomes triable in the circuit court de novo. Ball v. State, 202 Miss. 405, 32 So. 2d 195, 1947 Miss. LEXIS 291 (Miss. 1947).

Criminal case, in which justice was disqualified because of interest, must, on appeal to county court, be tried de novo. State v. Dearman, 152 Miss. 6, 118 So. 349, 1928 Miss. LEXIS 204 (Miss. 1928).

Trial in circuit court on appeal from justice of peace corrected all errors committed by justice, either as to ruling of law or ruling on facts. Hitt v. State, 149 Miss. 718, 115 So. 879, 1928 Miss. LEXIS 77 (Miss. 1928); Foote v. State, 115 So. 886 (Miss. 1928); Jones v. State, 115 So. 886 (Miss. 1928).

Accused's right to trial in circuit court cannot be affected by what was done in the justice court, nor can any motion made in the circuit court deprive him of a right to trial therein on the merits. Payne v. State, 101 Miss. 588, 58 So. 532, 1912 Miss. LEXIS 16 (Miss. 1912).

10. —Amendment.

Code 1942, § 1202 clearly permits criminal affidavits which were originally filed in the justice of the peace court to be amended in the circuit court. Jones v. State, 268 So. 2d 348, 1972 Miss. LEXIS 1198 (Miss. 1972).

In a prosecution on a charge of trespass on land, the affidavit of the complainant, which failed to describe the land, was at most only defective and not void, and might be amended by the furnishing of an accurate description of the land. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

An affidavit, charging a misdemeanor before a justice of the peace, may, on appeal to the circuit court, be amended so as to charge the offense intended to be charged in the affidavit. Moran v. State, 137 Miss. 435, 102 So. 388, 1925 Miss. LEXIS 3 (Miss. 1925).

Affidavit charging no offense held amendable in circuit court on appeal from conviction in mayor's court, to properly charge offense. City of Pascagoula v. Seymour, 136 Miss. 502, 101 So. 576, 1924 Miss. LEXIS 159 (Miss. 1924).

A judgment of conviction in the circuit court on appeal from a justice of the peace cannot be enlarged by amendment after the expiration of the term so as to include a recovery against the sureties on the appeal-bond. Barber v. Biloxi, 76 Miss. 578, 25 So. 298, 1898 Miss. LEXIS 139 (Miss. 1898).

On appeal the affidavit, if defective, may be amended, and the charge as amended need not be sworn to by anyone. Coulter v. State, 75 Miss. 356, 22 So. 872, 1897 Miss. LEXIS 120 (Miss. 1897).

Where a defendant was convicted of unlawful retailing upon an affidavit charging certain sales to certain persons named therein, though the names of such persons were unnecessary, on appeal the court cannot strike out the names and prove a sale to a different person, as they became a part of the description of the offense. Hudson v. State, 73 Miss. 784, 19 So. 965, 1896 Miss. LEXIS 212 (Miss. 1896).

An affidavit stating an imperfect venue is amendable under this section [Code 1942, § 1202] and objection to it must be made before the jury is empanelled. Burnett v. State, 72 Miss. 994, 18 So. 432, 1895 Miss. LEXIS 54 (Miss. 1895).

11. —Evidence.

Findings by a trial judge that a defendant confessed voluntarily and that such confession is admissible are findings of fact. Such findings are treated as findings of fact made by a trial judge sitting without a jury as in any other context. As long as the trial judge applies the correct legal standards, his or her decision will not be reversed on appeal unless it is manifestly in error or in contrary to the overwhelming weight of the evidence. Davis v. State, 551 So. 2d 165, 1989 Miss. LEXIS 364 (Miss. 1989), cert. denied, 494 U.S. 1074, 110 S. Ct. 1796, 108 L. Ed. 2d 797, 1990 U.S. LEXIS 1741 (U.S. 1990).

Record certified to circuit court on appeal from justice's court, including copy of judgment of justice, is competent evidence in circuit court. Broadus v. Calhoun, 139 Miss. 28, 103 So. 808, 1925 Miss. LEXIS 125 (Miss. 1925).

Defendant appealed from conviction in justice court for unlawful sale of liquors under two affidavits charging sales on April 8 and 10, held that on trial in circuit court on affidavit of April 10 objection to evidence of sales for two years prior thereto was properly overruled. Wilson v. State, 113 Miss. 748, 74 So. 657, 1917 Miss. LEXIS 150 (Miss. 1917).

12. —Judgment.

Circuit court's judgment dismissing appeal from justice court, held erroneous for failure to show defendant's opportunity to prosecute appeal. Ingram v. State, 136 Miss. 291, 101 So. 380, 1924 Miss. LEXIS 131 (Miss. 1924).

13. Dismissal of appeal.

The circuit court abused its discretion in refusing to set aside an order of dismissal and for a writ of procedendo where a defendant convicted in the municipal court of disturbing the peace had timely perfected her appeal to the July 1978 Term and had met the calling of the docket at each subsequent term thereafter until January 26, 1981, which was the first day of the regular January 1981

Term of the court, at which time the defendant had been ill and where, having learned that the writ of procedendo had been ordered, she timely filed a motion to have the order set aside. Sartain v. State, 406 So. 2d 43, 1981 Miss. LEXIS 2294 (Miss. 1981).

Where the accused, appealing from a conviction in justice of the peace court of unlawful possession of liquor, requested the circuit court to continue his case so he could prepare and the court granted a one-half day continuance but the accused did not appear to the time set, the court properly dismissed the appeal and did not abuse its discretion in overruling the motion to set aside the dismissal of the appeal. Murphy v. State, 223 Miss. 290, 78 So. 2d 342, 1955 Miss. LEXIS 379 (Miss. 1955).

One appealing a conviction from the justice court to the circuit court stands there for trial de novo as defendant and occupies in that court the same attitude of a defendant as he did in the justice court and as such has no right to dismiss the appeal with procedendo. Thigpen v. State, 206 Miss. 87, 39 So. 2d 768, 1949 Miss. LEXIS 244 (Miss. 1949).

Where at time appeal from conviction was perfected from municipal court to circuit court, no special term of circuit court had been ordered, appeal was returnable to next regular term, and when return day has been so fixed cause was not triable at special term and court was without authority to dismiss appeal at special term. Gortney v. New Albany, 171 Miss. 896, 158 So. 921, 1935 Miss. LEXIS 24 (Miss. 1935).

Error to dismiss appeal from conviction in city court, triable de novo, where counsel appearing for defendant unavoidably delayed. Morris v. Tupelo, 129 Miss. 887, 93 So. 433, 1922 Miss. LEXIS 103 (Miss. 1922); Cannon v. State, 134 Miss. 805, 100 So. 8, 1924 Miss. LEXIS 324 (Miss. 1924).

One who appeals to circuit court from conviction in justice court has no right to have appeal dismissed after evidence for the state has been introduced in the circuit court. Bang v. State, 106 Miss. 824, 64 So. 734, 1914 Miss. LEXIS 22 (Miss. 1914).

OPINIONS OF THE ATTORNEY GENERAL

Posting of bond in relation to appeal from criminal conviction of justice court or municipal court is jurisdictional, and a circuit clerk may refuse to accept appeal from a nonindigent without the posting of a bond. Mitchell, Jan. 24, 1992, A.G. Op. #91-0947.

RESEARCH REFERENCES

ALR.

Court's presentence inquiry as to, or consideration of, accused's intention to appeal, as error. 64 A.L.R.3d 1226.

Prosecutor's appeal in criminal case to radical, national, or religious prejudice as ground for mistrial, new trial, reversal, or vacation of sentence-modern cases. 70 A.L.R.4th 664.

Abatement of state criminal case by accused's death pending appeal of conviction-modern cases. 80 A.L.R.4th 189.

Failure to appeal denial of double jeopardy claim within time limits of Rule 4, Federal Rules of Appellate Procedure, as precluding review of claim on appeal of conviction at retrial. 51 A.L.R. Fed. 770.

Am. Jur.

4 Am. Jur. 2d, Appellate Review §§ 75 et seq., 201 et seq.

5 Am. Jur. 2d, Appellate Review §§ 325 et seq., 402, 403.

47 Am. Jur. 2d, Justices of the Peace §§ 48 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2324 et seq.

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§ 99-35-3. Appearance bond.

The appellant if sentenced to imprisonment for an offense or to stand committed until his fine and costs shall be paid, may be relieved from such imprisonment or commitment pending his appeal, by giving bond with sufficient resident sureties or one or more guaranty or surety companies authorized to do business in this state, to be approved by the justice court judge or municipal judge, payable to the state in the penalty of not less than One Hundred Dollars ($100.00), nor more than One Thousand Dollars ($1,000.00), except for the violation of any of the criminal statutes of Mississippi prohibiting the sale and possession of intoxicating liquors, when the bond shall not be less than One Hundred Fifty Dollars ($150.00), nor more than One Thousand Dollars ($1,000.00), to be determined by the justice court judge or municipal judge in reference to the grade of the offense as indicated by the judgment and ability of the appellant to give bond, conditioned to appear before the appellate court at the next term after such appeal shall be taken, to answer to the charge against him, and so to continue until discharged. On default of defendant a forfeiture shall be entered against him and his sureties.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 14(4); 1857, ch. 58, art. 23; 1871, § 1335; 1880, § 2355; 1892, § 86; 1906, § 87; Hemingway's 1917, § 69; 1930, § 68; 1942, § 1202; Laws, 1956, ch. 216; Laws, 1968, ch. 308, § 1; Laws, 1988, ch. 416, § 2, eff from and after July 1, 1988.

Cross References — Right of appeal, requirement to post bond, trial de novo on appeal, see § 99-35-1.

Remittance of fines and forfeitures, see § 99-35-13.

Restrictions on who may sign bonds, see Miss. Unif. Cir. & County Ct. Prac. R. 1.07.

Bond and appearance, see Miss. Unif. Cir. & County Ct. Prac. R. 5.09.

JUDICIAL DECISIONS

1. In general.

Circuit court lacked jurisdiction over defendant's appeal of his municipal court convictions because defendant failed to appear for his circuit court date despite receiving proper notice and did not file a timely motion to restore his cases to the docket. Raspberry v. City of Aberdeen, 964 So. 2d 1211, 2007 Miss. App. LEXIS 618 (Miss. Ct. App. 2007).

A criminal defendant who duly noticed his appeal to the Circuit Court was entitled to a hearing and an opportunity to correct any deficiencies in his appearance bond where the bond, though imperfect, was filed and approved by the Justice

Court judge. Dixon v. State, 528 So. 2d 832, 1988 Miss. LEXIS 317 (Miss. 1988).

Filing of an appeal transcript in circuit court then in session did not confer authority on that court to dispose of the case until its next term where the bond conditioned the defendant's appearance before the circuit court at the next term after the appeal should be taken. Ball v. State, 202 Miss. 405, 32 So. 2d 195, 1947 Miss. LEXIS 291 (Miss. 1947).

Bond must be executed before appeal allowed to circuit court; defendant seeking to prove bond executed must tender new bond and must file affidavit setting out a substantial copy of original bond before parol proof of its execution can be received. Polk v. Seminary, 89 Miss. 293, 42 So. 129, 1906 Miss. LEXIS 5 (Miss. 1906).

A bond conditioned as a bond on appeal in a civil case cannot be made to operate as an appeal bond in a criminal case. Redus v. Gamble, 85 Miss. 165, 37 So. 1010, 1904 Miss. LEXIS 124 (Miss. 1904).

Appeals from justices' courts to the circuit court in criminal cases are governed by this section [Code 1942, § 1202], authorizing such appeals upon the execution of a bond to appear at "the next term of the circuit court," meaning the term of said court next after the appeal is granted. Ex parte Grubbs, 80 Miss. 288, 31 So. 741, 1902 Miss. LEXIS 243 (Miss. 1902).

A petition for habeas corpus complaining that relator had not been allowed to appeal from the judgment of a justice, but was wrongfully deprived of his liberty, must show that such an appeal was sought and that sufficient bond was tendered. Ex parte Gibson, 12 So. 209 (Miss. 1892).

RESEARCH REFERENCES

ALR.

Abatement of state criminal case by accused's death pending appeal of conviction-modern cases. 80 A.L.R.4th 189.

Am. Jur.

47 Am. Jur. 2d, Justices of the Peace §§ 62 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Forms 401 et seq. (form, amount, approval, or waiver of security in lower court).

§ 99-35-5. Sheriff empowered to take appeal bond from misdemeanant convicted in justice court.

The sheriff of any county is empowered and directed to take an appeal bond in any case of a conviction of a misdemeanor before a justice of the peace of his county, and upon the prisoner or his attorney furnishing a valid appeal bond, and the sheriff taking and approving the same, he shall discharge the appellant from custody, turn over the bond to the circuit clerk and notify the justice of the peace that an appeal has been taken and direct him to send up all papers to the next term of the circuit court in the same manner as if the appeal bond had been filed with the justice from whose judgment the appeal was taken. Nothing in this section shall prevent a justice of the peace from accepting and receiving appeal bonds as provided by law, but the sheriff shall have power concurrent with the justice of the peace of their counties in all matters pertaining to the taking of appeal bonds in similar cases.

HISTORY: Codes, Hemingway's 1917, § 67; 1930, § 70; 1942, § 1204; Laws, 1908, ch. 137.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Duty of sheriff with respect to bail bond, see §§ 99-5-7, 99-5-15, 99-5-17.

Prosecutions before justice court, judge generally, see §§ 99-33-1 et seq.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Justices of the Peace §§ 62 et seq.

§ 99-35-7. Appeals without bond or supersedeas.

Any person who shall have been convicted of a criminal offense against the laws of this state, by the judgment of a justice court, or by a municipal court for the violation of an ordinance of the municipality, who by reason of his poverty is not able to give bond as prescribed in Section 99-35-3, may nevertheless appeal from such conviction on his making an affidavit that, by reason of his poverty, he is unable to give bond or other security to obtain such appeal, but the appeal in such case shall not operate as a supersedeas of the judgment, nor discharge the appellant from custody, but the judgment shall be executed as if an appeal had not been taken, unless the presiding judge of the appellate court shall, for good reason, see fit to stay the execution of the judgment rendered by the court below by ordering the release of the defendant on his own recognizance, and this shall not affect the trial of the case anew in the appellate court.

HISTORY: Codes, 1880, § 2356; 1892, § 87; 1906, § 88; Hemingway's 1917, § 70; 1930, § 69; 1942, § 1203; Laws, 1938, ch. 273; Laws, 1988, ch. 416, § 3, eff from and after July 1, 1988.

Cross References — Justice courts generally, see §§ 9-11-2 et seq.

Written demand for appeal from judgment of justice of the peace in lieu of bond, see § 11-51-103.

Affidavit to establish poverty in civil suit, see § 11-53-17.

Appearance bond, see § 99-35-3.

Appeals to supreme court without bonds by criminal indigents, see § 99-35-105.

Appeal bonds, see MRCrP 18.1, 29.1 to 29.5.

JUDICIAL DECISIONS

1. In general.

In view of this provision, one convicted in a state court is not excused by inability to pay the cost of exhausting state remedies from doing so before seeking a federal writ of habeas corpus. Application of Wyckoff, 196 F. Supp. 515, 1961 U.S. Dist. LEXIS 3568 (S.D. Miss. 1961).

Under this section [Code 1942, § 1203], an appeal by one convicted of a misdemeanor before a justice of the peace supersedes but does not vacate the judgment; and if such appeal should be dismissed for want of prosecution, that fact should be certified to the justice of the peace, who should then enforce his judgment. Ex parte Caldwell, 62 Miss. 774, 1885 Miss. LEXIS 144 (Miss. 1885).

RESEARCH REFERENCES

ALR.
Abatement of state criminal case by accused's death pending appeal of conviction-modern cases. 80 A.L.R.4th 189.

Am. Jur.
5 Am. Jur. 2d, Appellate Review §§ 398 et seq., 434 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Forms 481-485 (inability to give security).

CJS.
4 C.J.S., Appeal and Error §§ 429 et seq.

§ 99-35-9. Papers to be transmitted to circuit court clerk.

The clerk of the justice court or municipal court from which judgment convicting of a criminal offense an appeal shall be taken shall at once transmit to the clerk of the circuit court the bond taken and a certified copy of the record of the case, with all the original papers in the case, as in appeals in civil cases. If an appeal be taken from a judgment convicting of a criminal offense, during a session of the circuit court of the county, the transcript and papers shall be returned to, and the case triable at that term of the court, and the bond shall bind the defendant accordingly, and the clerk of the circuit court shall docket the case on the state docket, and shall be entitled to like fees as in other cases. The judge setting the bond shall be liable for the amount of the bond, if he fails to require a good and sufficient one. The clerk of the justice court or municipal court shall make up the transcript of the record and transmit the same to the circuit clerk within ten (10) days after the appeal bond is given.

HISTORY: Codes, 1880, § 2357; 1892, § 88; 1906, § 89; Hemingway's 1917, § 71; 1930, § 71; 1942, § 1205; Laws, 1981, ch. 471, § 57; Laws, 1982, ch. 423, § 28, made eff from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).

Cross References — Form of record transmitted from justice of the peace, see § 11-51-87.

Transmittal of record from inferior tribunals in civil cases, see § 11-51-89.

Taxation of costs in cases appealed from inferior tribunals, see § 11-53-71.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2.-10. [Reserved for future use.]

II. UNDER FORMER § 99-35-121.

11. In general.

I. UNDER CURRENT LAW.

1. In general.

Where prosecution originated in justice court, record should show judgment imposing sentence which is required to confer jurisdiction on circuit court on appeal. Gilmer v. State, 157 Miss. 622, 128 So. 773, 1930 Miss. LEXIS 349 (Miss. 1930).

Transcript of record of justice court, with certificate that all original papers were contained therein, held sufficient. Raines v. State, 148 Miss. 70, 114 So. 125, 1927 Miss. LEXIS 11 (Miss. 1927).

Circuit court is without jurisdiction of appeal from justice court in absence of properly certified record. Salers v. State, 142 Miss. 88, 107 So. 375, 1926 Miss. LEXIS 72 (Miss. 1926); Jeffries v. State, 146 Miss. 467, 111 So. 576, 1927 Miss. LEXIS 200 (Miss. 1927).

Circuit court on appeal from justice of peace was without jurisdiction, there being no transcript of proceedings in justice court, but merely a certificate that defendant was convicted. Galloway v. State, 144 Miss. 696, 110 So. 665, 1926 Miss. LEXIS 419 (Miss. 1926).

The point that on appeal from justice to circuit court there was no transcript of proceedings in justice court may be raised for first time on appeal from circuit court. Galloway v. State, 144 Miss. 696, 110 So. 665, 1926 Miss. LEXIS 419 (Miss. 1926).

The circuit court has no jurisdiction of prosecution for assault and battery, where record does not disclose judgment of justice of peace or certificate or transcript, as required by this section [Code 1942, § 1205]. Cook v. State, 144 Miss. 519, 110 So. 443, 1926 Miss. LEXIS 413 (Miss. 1926).

Jurisdiction did not attach where justice of the peace failed to attach certificate of record. Gardner v. State, 145 Miss. 210, 110 So. 588, 1926 Miss. LEXIS 25 (Miss. 1926).

Where record shows that circuit court did not have jurisdiction on account of absence of transcript of the proceedings in justice court, but that since trial, such transcript had been filed, this court must reverse and remand the case for new trial. Salers v. State, 142 Miss. 88, 107 So. 375, 1926 Miss. LEXIS 72 (Miss. 1926).

On certification by justice of peace of the original affidavit charging a misdemeanor, judgment and appeal bond, but not docket entries, circuit court acquired jurisdiction of the appeal. Borders v. State, 138 Miss. 788, 104 So. 145, 1925 Miss. LEXIS 99 (Miss. 1925).

The record of which the justice is to transmit a copy is his docket entries and judgments. Hughston v. Cornish, 59 Miss. 372, 1882 Miss. LEXIS 119 (Miss. 1882).

2.-10. [Reserved for future use.]

II. UNDER FORMER § 99-35-121.

11. In general.

Counsel must take notice that clerk is required to send appeal to supreme court where cause will be docketed, and, if record is not in supreme court on return day, and stenographer has not had requisite time allowed by law in which to file his notes, that fact should be suggested to court, and, if stenographer does not file notes within time allowed by law, counsel should take appropriate steps before circuit court or judge to compel filing of notes, and make motion in supreme court that case be passed until notes can be obtained and record filed. Also, if stenographer does not file notes within time allowed by law, appellant should prepare bill of exceptions containing substance of notes and present it to circuit judge for approval, giving notice thereof to opposing counsel of hearing before judge. Warren v. State, 165 Miss. 783, 144 So. 698, 1932 Miss. LEXIS 293 (Miss. 1932), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Giving stenographer notice to transcribe and file notes does not relieve appellant's attorney from further duty until notice of filing is received. Warren v. State, 165 Miss. 783, 144 So. 698, 1932 Miss. LEXIS 293 (Miss. 1932), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Motion to reinstate appeal dismissed for want of prosecution was overruled for failure of motion to show diligence to secure stenographer's transcribed notes. Warren v. State, 165 Miss. 783, 144 So. 698, 1932 Miss. LEXIS 293 (Miss. 1932), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

RESEARCH REFERENCES

ALR.

Determination of indigency of accused entitling him to transcript or similar record for purposes of appeal. 66 A.L.R.3d 954.

Use in state court by counsel or party of tape recorder or other electronic device to make transcript of criminal trial proceedings. 67 A.L.R.3d 1013.

Am. Jur.

5 Am. Jur. 2d, Appellate Review §§ 441 et seq.

47 Am. Jur. 2d, Justices of the Peace §§ 62 et seq.

CJS.

4 C.J.S., Appeal and Error §§ 554 et seq.

§ 99-35-11. Amendment of affidavit, pleading, or proceedings.

When an appeal is presented to the circuit court in any criminal case from the judgment or sentence of a justice of the peace or municipal court, it shall be permissible, on application of the state or party prosecuting, to amend the affidavit, pleading, or proceedings at any time before a verdict so as to bring the merits of the case fairly to trial on the charge intended to be set out in the original affidavit; the amendment to be made on such terms as the court may consider proper.

HISTORY: Codes, 1892, § 1438; 1906, § 1511; Hemingway's 1917, § 1269; 1930, § 1292; 1942, § 2535; Laws, 1886, p. 85.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Amendment of indictment or information in case of dilatory plea, see § 99-7-19.

Amendment of indictment where name of unknown defendant becomes known, see § 99-7-25.

Amendment of indictment where variance appears between statement in indictment and evidence offered in proof, see § 99-17-13.

Prosecutions before justice court judges generally, see §§ 99-33-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular offenses.

1. In general.

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trial in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869, 1969 U.S. Dist. LEXIS 8348 (S.D. Miss. 1969), dismissed, Hall v. Baum, 397 U.S. 93, 90 S. Ct. 818, 25 L. Ed. 2d 79, 1970 U.S. LEXIS 2741 (U.S. 1970), dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80, 1970 U.S. LEXIS 2742 (U.S. 1970).

This section [Code 1942, § 2535] which refers to the amendment of affidavits, contains no requirement that an order allowing such amendment should be spread upon the minutes as in the case of indictments. Holloway v. State, 52 So. 2d 492 (Miss. 1951).

Provision that objections to indictment for defect on face must be taken by a demurrer applies to prosecution based on affidavit; affidavit not demurred to for defect on face will be treated as sufficient; defect on face of affidavit may be amended in circuit court on appeal. Sullivan v. State, 150 Miss. 542, 117 So. 374, 1928 Miss. LEXIS 184 (Miss. 1928).

However in an appeal from a mayor's court the transcript of the record cannot be supplied by the oral testimony of the mayor. Washington v. State, 93 Miss. 270, 46 So. 539, 1908 Miss. LEXIS 95 (Miss. 1908).

A missing affidavit in an appeal from the city court may be supplied by oral proof on the trial. Winfield v. Jackson, 89 Miss. 272, 42 So. 183, 1906 Miss. LEXIS 18 (Miss. 1906).

A defective affidavit on which the defendant has been convicted by a magistrate can be amended in the circuit court under this section [Code 1942, § 2535]. Triplet v. State, 80 Miss. 379, 31 So. 743, 1902 Miss. LEXIS 246 (Miss. 1902); Brown v. State, 81 Miss. 137, 32 So. 952, 1902 Miss. LEXIS 134 (Miss. 1902).

Under this section [Code 1942, § 2535] an affidavit defective before a justice of the peace may be amended on appeal to the circuit court without being sworn to anew. Coulter v. State, 75 Miss. 356, 22 So. 872, 1897 Miss. LEXIS 120 (Miss. 1897).

2. Particular offenses.

Where an affidavit charged the defendant did wilfully and unlawfully sell one-half pint of liquor and it was amended to charge defendant with unlawful sale of intoxicating liquor, the affidavit sufficiently indicated the offense intended to be charged and the defect was on the face of it, it was amendable and the failure to demur to it constituted a waiver of defect. Perciful v. Holley, 217 Miss. 203, 63 So. 2d 817, 1953 Miss. LEXIS 423 (Miss. 1953).

Where defendant was convicted in justice court under an affidavit charging him with contributing to delinquency of his minor son by permitting and using the son to aid in loading and distributing intoxicating liquors, and defendant appealed to circuit court, amendment of affidavit charging defendant contributing to delinquency of son also by knowingly and intentionally permitting son to be present while defendant was loading intoxicating liquors was allowed, since the essential charge was the same in the affidavit and the amendment. Mays v. State, 216 Miss. 631, 63 So. 2d 110, 1953 Miss. LEXIS 678 (Miss. 1953).

In prosecution for unlawful possession of intoxicating liquor, it was proper to permit amendment of affidavit for search warrant to show correct date of making thereof before justice of the peace. Simmons v. State, 179 Miss. 713, 176 So. 726, 1937 Miss. LEXIS 80 (Miss. 1937).

In prosecution for unlawful possession of intoxicating liquor, amendment of affidavit so as to charge that accused "wilfully and unlawfully" had in his possession intoxicating liquor was authorized by statute governing amendment of affidavit on appeal from justice of the peace. Patterson v. State, 179 Miss. 758, 176 So. 603, 1937 Miss. LEXIS 71 (Miss. 1937).

Where trial of prosecution for unlawful possession of intoxicating liquor was had on affidavit which failed to charge as required by statute that the offense was committed contrary to the ordinance of the municipality, supreme court was authorized to reverse and remand the prosecution, so that the affidavit might be amended accordingly. Wilson v. Aberdeen, 179 Miss. 751, 176 So. 601, 1937 Miss. LEXIS 70 (Miss. 1937).

Action of circuit court on appeal from conviction for unlawful possession of intoxicating liquor in a justice court in permitting amendments to be made to affidavit so as to state the name of defendant in making it conform to the affidavit for search warrant, and the search warrant for search and seizure, by inserting in the affidavit the words "did unlawfully," held authorized by statute. Wilson v. Aberdeen, 179 Miss. 751, 176 So. 601, 1937 Miss. LEXIS 70 (Miss. 1937).

Action of circuit court on appeal from conviction for the unlawful possession of intoxicating liquor in a justice court in permitting an amendment of the affidavit to show that the offense was committed in violation of a municipal ordinance as authorized by the statute. Wilson v. Aberdeen, 179 Miss. 751, 176 So. 601, 1937 Miss. LEXIS 70 (Miss. 1937).

A case where the affidavit alleged in charging larceny before a justice of the peace that the ownership of the property was in Forest Willis and in the circuit court the proof showed the ownership to be in three other persons an amendment was permitted in the affidavit so as to bring the merits of the case to trial on the charge attempted to be set out in the original affidavit. Cannon v. State, 140 Miss. 217, 105 So. 501, 1925 Miss. LEXIS 251 (Miss. 1925).

In the prosecution for the malicious shooting of a horse in which the affidavit did not give the name or description of the horse but alleged ownership in one person it was error to amend the affidavit by alleging ownership in another person. White v. State, 95 Miss. 75, 48 So. 611, 1909 Miss. LEXIS 221 (Miss. 1909).

Where a defendant has been convicted before a magistrate of unlawful retailing, the affidavit charging the sale to certain named persons, such names though unnecessary primarily become thereby a part of the description of the offense and on appeal to the circuit court cannot be stricken out so that a sale to a different person may be proved. Hudson v. State, 73 Miss. 784, 19 So. 965, 1896 Miss. LEXIS 212 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Justices of the Peace §§ 62 et seq.

§ 99-35-13. Remittance of fines and forfeitures.

In the event there is an acquittal or the case is nolle prosequi, the order of the court shall direct that any fine or forfeiture paid in the lower court be remitted, and a certified copy of the said order shall be sufficient authority for the remittance of said fine or forfeiture by the board of supervisors in the event the case was appealed from a judgment of a justice of the peace, or by the governing authorities of a municipality in the event the case was appealed from a judgment of a mayor or police justice of a city, town or village.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 14(4); 1857, ch. 58, art. 23; 1871, § 1335; 1880, § 2355; 1892, § 86; 1906, § 87; Hemingway's 1917, § 69; 1930, § 68; 1942, § 1202; Laws, 1956, ch. 216; Laws, 1968, ch. 308, § 1, eff from and after passage (approved June 27, 1968).

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Right of appeal, requirement to post bond, trial de novo on appeal, see § 99-35-1.

Appearance bond, see § 99-35-3.

ARTICLE 3.

APPEALS TO SUPREME COURT AND RELATED PROCEDURES.

Sec.	
99-35-101.	Right of appeal.
99-35-103.	When state or municipality may appeal.
99-35-105.	Prepayment of costs; appeal without prepayment; reimbursement of successful appellants.
99-35-107.	Deposit for costs; security for jail fees.
99-35-109.	Bail after conviction of misdemeanor.
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Sec.
99-35-117. Bail after conviction of felony; judge to fix amount of bond; judge or sheriff may approve bond.
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99-35-127. Sheriff of Hinds County to receive prisoners; fees.
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99-35-137. Copy of death sentence to be delivered to sheriff.
99-35-139. Prisoner to be delivered to sheriff of proper county if new trial ordered.
99-35-141. Clerk to notify penitentiary of reversals.
99-35-143. Errors which are not grounds for reversal.
99-35-145. Repealed.

§ 99-35-101. Right of appeal.

Any person convicted of an offense in a circuit court may appeal to the Supreme Court. However, where the defendant enters a plea of guilty and is sentenced, then no appeal from the circuit court to the Supreme Court shall be allowed.

HISTORY: Codes, Hutchinson's 1848, ch. 63, art. 7(1); 1857, ch. 64, arts. 306, 307; 1871, § 2841; 1880, § 2314; 1892, § 36; Laws, 1906, § 37; Hemingway's 1917, § 12; Laws, 1930, § 16; Laws, 1942, § 1150; Laws, 1914, ch. 151; Laws, 2008, ch. 457, § 1, eff from and after July 1, 2008.

Cross References — Appeals in civil cases generally, see §§ 11-51-3 et seq.

Appealability of post-conviction finding of circuit court regarding sanity of prisoner sentenced to death, see § 99-19-57.

Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Oral argument upon appeal to Supreme Court, see Miss. R. App. P. 34.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Matters appealable.
3. — Sentencing appeals.
4. Appeal by prosecution.
5. Plea of guilty, effect of.
6. Coram nobis.
7. Notice requirements.

1. In general.

Where defendant did not appeal the sentence imposed following his guilty plea within 30 days of the entry of the order and did not move within 180 days of the order to reopen the appeal, defendant's appeal was procedurally barred, and defendant's proper remedy was post-conviction relief. Watson v. State, 841 So. 2d 218, 2003 Miss. App. LEXIS 246 (Miss. Ct. App. 2003).

There is no rule, statute, or constitutional provision which limits the state's right to seek certiorari review of a Court of Appeals decision which reverses a criminal conviction and remands for a new trial. Cohen v. State, 732 So. 2d 867, 1998 Miss. LEXIS 623 (Miss. 1998).

The state was authorized to appeal the trial court's failure to sentence the defendant to the maximum sentence after he was adjudicated an habitual offender. Pool v. State, 724 So. 2d 1044, 1998 Miss. App. LEXIS 1040 (Miss. Ct. App. 1998).

A defendant desiring an out-of-time appeal must, at the very least, show that the failure to timely perfect an appeal was through no fault of his or her own. Thus, a defendant's application for an out-of-time appeal was properly denied where the defendant was fully advised of his right to appeal, he understood his right to appeal, and he did nothing indicating that he wished an appeal until well after the time limit had expired; the defendant's sworn waiver of the right to appeal functioned as substantial credible evidence that the defendant received contemporaneous advice regarding his right to appeal and that he knowingly and intelligently waived that right. Fair v. State, 571 So. 2d 965, 1990 Miss. LEXIS 715 (Miss. 1990).

Although the authority to resentence a misdemeanant could become vested in the Circuit Court only upon its receipt of an appellate mandate, the Circuit Court could enter a resentencing order scheduled to take effect upon receipt of the mandate. Gardner v. State, 547 So. 2d 806, 1989 Miss. LEXIS 369 (Miss. 1989).

In capital murder prosecutions, as in other cases, the Supreme Court has the authority to affirm a conviction for a lesser included offense while simultaneously reversing as to the greater offense, if the evidence so warrants. Wheeler v. State, 536 So. 2d 1341, 1988 Miss. LEXIS 605 (Miss. 1988).

Although a defendant is entitled to transcripts of prior proceedings in the same case, the state is not required as a matter of course to provide transcripts from related cases. In such a case, the petitioner should be expected to show some specific need or reason for seeking the transcripts. The bare appearance of possible overlap in evidence should not, ordinarily, be enough. Fisher v. State, 532 So. 2d 992, 1988 Miss. LEXIS 438 (Miss. 1988).

The right to appeal to the Supreme Court afforded to one convicted of a crime is not a common law right, but is strictly a statutory right, and an appeal must be perfected in the manner provided by statute. State v. Ridinger, 279 So. 2d 618, 1973 Miss. LEXIS 1480 (Miss. 1973), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

Supreme court will consider only matters which are properly a part of the record before it, hence papers obtained after adjournment of trial court which are not properly part of the record will not be looked to on appeal. Craig v. State, 208 Miss. 528, 44 So. 2d 860, 1950 Miss. LEXIS 270 (Miss. 1950).

2. Matters appealable.

Pursuant to Miss. Code Ann. § 99-35-101, defendant possessed the right to appeal his guilty plea, but the right extended only to alleged errors in sentencing. Lett v. State, 965 So. 2d 1066, 2007 Miss. LEXIS 549 (Miss. 2007).

Appellate jurisdiction was lacking in defendant's direct appeal from the entry of guilty pleas because defendant's contentions went to whether the plea was obtained involuntarily and in violation of constitutional rights; defendant argued that the circuit court and the district attorney were both motivated by vindictiveness resulting from his successful post-conviction relief attack on his initial guilty plea. Fowler v. State, 2003 Miss. App. LEXIS 1024 (Miss. Ct. App. Nov. 4, 2003), sub. op., op. withdrawn, 919 So. 2d 1129, 2005 Miss. App. LEXIS 581 (Miss. Ct. App. 2005).

This section provides the avenue for direct appeal of a criminal conviction, but it does not permit an appeal from the denial of a motion for a transcript or other records as a separate action in and of itself, though a defendant may raise such a claim within the context of a direct appeal under this statute. Fleming v. State, 553 So. 2d 505, 1989 Miss. LEXIS 476 (Miss. 1989), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

An order for psychiatric examination of an accused to ascertain his mental capacity to stand trial is not a final judgment so as to be appealable. Jaquith v. Beckwith, 248 Miss. 491, 157 So. 2d 403, 1963 Miss. LEXIS 404 (Miss. 1963).

Order revoking suspension of sentence of accused who had pleaded guilty of unlawful possession of intoxicating liquors held not appealable. Cooper v. State, 175 Miss. 718, 168 So. 53, 1936 Miss. LEXIS 73 (Miss. 1936). But see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

Supreme court is without jurisdiction of appeal in a criminal case which is prosecuted before judgment from a verdict convicting the appellant, and will of its own motion dismiss the same. Hayden v. State, 81 Miss. 55, 32 So. 922, 1902 Miss. LEXIS 130 (Miss. 1902).

This section [Code 1942, § 1150] does not authorize an appeal before sentence or judgment, although there has been a verdict of guilty. Lemly v. State, 69 Miss. 628, 12 So. 559, 1892 Miss. LEXIS 22 (Miss. 1892).

3. — Sentencing appeals.

Petitioner claimed in his request for post-conviction relief that because the circuit court failed to advise him that he had the right to appeal his sentence he had the right to relief; however, during the plea colloquy, the circuit court informed the petitioner that could not appeal if pled guilty, and the trial court was not required to inform defendant of his right to appeal the sentence. Harris v. State, 17 So. 3d 1115, 2009 Miss. App. LEXIS 152 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 452 (Miss. 2009).

In an armed robbery case, the petitioner's third motion for post-conviction relief was procedurally barred as a successive writ as it did not fall within any of the exceptions of Miss. Code Ann. § 99-39-23(6), and the State's failure to raise the successive pleadings bar in no way impeded the circuit court's ability to apply the bar; and because the petitioner did not assert that he received an illegal sentence from which he would have appealed had he possessed the requisite knowledge, and because there was no ambiguity in the armed robbery charge, he did not substantially show a violation of a fundamental right that would have excepted these issues from the procedural bar. Flowers v. State, 978 So. 2d 1281, 2008 Miss. App. LEXIS 201 (Miss. Ct. App. 2008).

Where appellant challenged his thirty-year sentence for the unlawful sale of cocaine, he filed a motion to reconsider. Because appellant did not directly appeal his conviction under Miss. Code Ann. § 99-35-101 or proceed under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29, the appeal of the order denying his motion to reconsider was not properly before the appellate court. Alexander v. State, 979 So. 2d 716, 2007 Miss. App. LEXIS 755 (Miss. Ct. App. 2007).

4. Appeal by prosecution.

Neither this section [Code 1942, § 1150] nor Code 1892, § 39 [Code 1942, § 1153], authorizes an appeal by a municipality from a judgment of the circuit court discharging one arrested for violating a municipal ordinance. City of Water Valley v. Davis, 73 Miss. 521, 19 So. 235, 1895 Miss. LEXIS 156 (Miss. 1895).

5. Plea of guilty, effect of.

Circuit court did not err in denying appellant postconviction relief (PCR) without an evidentiary hearing because there was no merit to the claim that appellant entitled to relief on the ground his trial attorney failed to advise him of his right to directly appeal his sentence; a defendant who pleaded guilty had to file a PCR motion rather than a direct appeal, and the transcript of the plea hearing revealed appellant was informed of the consequences of pleading guilty. Berry v. State, 230 So. 3d 360, 2017 Miss. App. LEXIS 637 (Miss. Ct. App. 2017).

Appellate court dismissed defendant's appeal from the denial of defendant's motions for post-conviction relief without prejudice for lack of appellate jurisdiction because the appeal was a direct appeal and defendant had pleaded guilty. Small v. State, 141 So. 3d 61, 2014 Miss. App. LEXIS 357 (Miss. Ct. App. 2014).

Defendant was not deprived of due process by a trial court's failure to inform defendant of the right to appeal defendant's sentence after entering an Alford plea to manslaughter; the trial court was not required to inform defendant of the right to appeal the resultant sentence. Dillon v. State, 75 So. 3d 1045, 2010 Miss.

App. LEXIS 629 (Miss. Ct. App. 2010), cert. dismissed, 2011 Miss. LEXIS 577 (Miss. Nov. 28, 2011).

Inmate was not denied his due process rights because he was not advised of his right to appeal to the state's highest court as under Miss. Code Ann. § 99-35-101, where a defendant entered a plea of guilty and was sentenced, then no appeal from the trial court to the state's highest court was allowed. Hunt v. State, 99 So. 3d 269, 2012 Miss. App. LEXIS 636 (Miss. Ct. App. 2012).

Although a prisoner argued the trial court failed to advise him of his right to appeal his sentence, a post-conviction court properly dismissed the prisoner's motion for post-conviction relief because the prisoner pleaded guilty to manslaughter over a year after the amended version of Miss. Code Ann. § 99-35-101 went into effect and the amended statute denied the state appellate courts of jurisdiction to hear appeals involving the validity of the sentence imposed by the trial court based on the guilty plea. Henderson v. State, 89 So. 3d 598, 2011 Miss. App. LEXIS 351 (Miss. Ct. App. 2011), cert. denied, 95 So. 3d 654, 2012 Miss. LEXIS 283 (Miss. 2012).

Defendant's motion for reduction of sentence was properly denied because the trial court's judgment that it did not have proper jurisdiction to amend the sentence was not in error; because defendant entered his guilty pleas on January 9, 2008, prior to the effective date of the amendment to Miss. Code Ann. § 99-35-101, the change in the statute did not impact his appeal. Seal v. State, 38 So. 3d 635, 2010 Miss. App. LEXIS 275 (Miss. Ct. App. 2010).

While it was true that a defendant could appeal the sentence resulting from a plea of guilty independently of the plea itself, there was no corresponding requirement that the circuit court notify the defendant of that right during the plea process; accordingly, the circuit court's failure to inform appellant of the ability to appeal the sentence separately did not deny him due process. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Defendant's guilty plea waived the right to complain on appeal about the validity of the search warrant and the circuit court's ruling regarding same, as there was no right of appeal from a valid guilty plea. Had he wanted to contest the court's ruling on the validity of the search warrant, he should have pleaded not guilty. Thompson v. State, 23 So. 3d 1100, 2009 Miss. App. LEXIS 924 (Miss. Ct. App. 2009).

Where appellant was convicted on a plea of guilty to the sale of cocaine after an undercover officer purchased cocaine from him, he challenged the voluntariness of his plea based on the fact that he was not able to view the videotape of the transaction before he entered his plea. Because he was not challenging his sentence, his direct appeal was procedurally barred by Miss. Code Ann. § 99-35-101; appellant's voluntary dismissal of his appeal constituted a final judgment within the meaning of Miss. Code Ann. § 99-35-101, and he was permitted to seek relief pursuant to the Mississippi Uniform Post-Conviction Relief Act, Miss. Code Ann. § 99-39-5(1)(g). Gray v. State, 29 So. 3d 791, 2009 Miss. App. LEXIS 464 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 139 (Miss. Mar. 11, 2010).

Post-conviction relief was denied because a trial court was not required to advise appellant inmate of his right to appeal after the entry of a guilty plea. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

When defendant pled guilty, he gave up the right to directly appeal his conviction, and because defendant pled guilty, the appellate court did not have jurisdiction to hear his grievances on direct appeal; while a conviction from a plea of guilty may not be directly appealed, a defendant may directly appeal the sentence given as a result of that plea. Sanchez v. State, 2 So. 3d 780, 2009 Miss. App. LEXIS 65 (Miss. Ct. App. 2009).

In a case where defendant was sentenced to eight years in prison with five years of post-release supervision after a guilty plea was entered to the crime of attempted burglary of a dwelling, a post-conviction relief motion was properly dismissed without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because there was no ineffective assistance of counsel where jurisdiction was included in an indictment, the charges were not contradictory, an attempt charge was appropriate, and appellant inmate's other self-serving arguments were wholly unsupported by the record. Moreover, a sentence was not illegal since a suspended sentence was not required in addition to post-release supervision, the sentence imposed was within the range permitted, and the inmate was not misinformed regarding his appellate rights. McKinney v. State, 7 So. 3d 291, 2008 Miss. App. LEXIS 626 (Miss. Ct. App. 2008).

State's motion to dismiss a defendant's appeal was granted where the defendant had forfeited her right to a direct appeal by her guilty plea to armed robbery and where her motion for records and transcripts did not accompany a petition for post-conviction collateral relief, under the Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29. Krickbaum v. State, 990 So. 2d 796, 2008 Miss. App. LEXIS 576 (Miss. Ct. App. 2008).

While a prisoner's conviction of possession of marijuana with intent to distribute from a plea of guilty could not be directly appealed pursuant to Miss. Code Ann. § 99-35-101, the prisoner could have directly appealed the sentence given as a result of that plea. However, the trial court was not required to inform the prisoner of his right to appeal the sentence on his guilty plea. Cook v. State, 990 So. 2d 788, 2008 Miss. App. LEXIS 560 (Miss. Ct. App. 2008).

Defendant's guilty plea to possession of more than two grams but less than ten grams of cocaine pursuant to Miss. Code Ann. § 41-29-139 (Rev. 2005) was freely, voluntarily, and intelligently given because defendant stated that he sought to plead guilty to possession of 5.67 grams of cocaine in his petition to enter a plea of guilty and agreed that he was aware of and understood the charges during his plea colloquy. In addition, the fact that the trial court did not to inform defendant of his right to appeal the resulting sentence under Miss. Code Ann. § 99-35-101 (Rev. 2007) did not make his plea not voluntary or unintelligent because the trial court was not required to do so. Harris v. State, 5 So. 3d 1127, 2008 Miss. App. LEXIS 477 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 181 (Miss. 2009).

Defendant was not denied his right to due process as a result of a circuit judge's failure to inform him that he was not barred from appealing the sentence imposed on him as a result of his guilty plea because there was no compelling reason to impose such a notification requirement. Elliott v. State, 993 So. 2d 397, 2008 Miss. App. LEXIS 312 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 550 (Miss. 2008).

After entering a guilty plea, appellant was sentenced to consecutive four-year sentences for armed robbery and attempted armed robbery; appellant was not entitled to direct review of his sentences because he pled guilty. Walters v. State, 933 So. 2d 313, 2006 Miss. App. LEXIS 494 (Miss. Ct. App. 2006).

Record clearly demonstrated that defendant was informed that should he plead guilty to the crime, his plea of guilty would act as a waiver to a direct appeal to the Mississippi Supreme Court pursuant to Miss. Code Ann. § 99-35-101. Further, it could not be said that plea counsel's brief moment of confusion regarding which charges the State would pursue rose to the level of ineffective assistance of counsel and the record clearly indicated that the trial judge explained to defendant the terms of the plea agreement; thus, defendant was not denied either due process or effective assistance of counsel. Sykes v. State, 895 So. 2d 191, 2005 Miss. App. LEXIS 150 (Miss. Ct. App. 2005).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief because the inmate's plea was not involuntary as the inmate was advised as to the maximum sentence and the waiver of her right to appeal. Lee v. State, 918 So. 2d 87, 2006 Miss. App. LEXIS 23 (Miss. Ct. App. 2006).

In his post-conviction action, it was apparent that petitioner was contesting his conviction rather than the sentence imposed. He failed to assert even one allegation that his sentence was illegal, and since he was challenging his conviction, his only possible relief was a motion for post-conviction relief; he was not misadvised by the trial court that he had no right to appeal upon entering a plea of guilty. Jennings v. State, 896 So. 2d 374, 2004 Miss. App. LEXIS 1052 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 185 (Miss. 2005).

Defendant's appeal was dismissed without prejudice for lack of jurisdiction under Miss. Code Ann. § 99-35-101, which prohibits persons having pleaded guilty to a crime from filing direct appeals to the Mississippi Supreme Court; however, an appeal from a sentence imposed pursuant to a guilty plea is not equivalent to an appeal from the guilty plea itself, but although the enhancement of the sentence did pertain to the length of the sentence, the appeal from the enhancement of the sentence was equivalent to an appeal from the guilty plea itself because defendant had pleaded guilty to the crime, and to the enhancement, both of which were set out in the indictment. Bennett v. State, 865 So. 2d 1158, 2004 Miss. LEXIS 181 (Miss. 2004).

Where a defendant was not attempting to appeal from his guilty plea, but from an alleged illegal sentence, the State's motion to dismiss the appeal for lack of jurisdiction was overruled. Norwood v. State, 846 So. 2d 1048, 2003 Miss. App. LEXIS 472 (Miss. Ct. App. 2003).

Where the defendant's appeal amounted to a challenge of his sentence, and not to the validity of his plea of guilty, the appeal was proper. Campbell v. State, 743 So. 2d 1050, 1999 Miss. App. LEXIS 317 (Miss. Ct. App. 1999).

A defendant could appeal from the sentence imposed even though he had pleaded guilty to the charges against him. Trotter v. State, 554 So. 2d 313, 1989 Miss. LEXIS 496 (Miss. 1989), overruled in part, Betterman v. Montana, — U.S. —, 136 S. Ct. 1609, 194 L. Ed. 2d 723, 2016 U.S. LEXIS 3349 (U.S. 2016).

Trial court has exclusive jurisdiction to hear and determine petition for postconviction relief filed by convicted defendant who is precluded from taking direct appeal by virtue of having entered guilty plea. McDonall v. State, 465 So. 2d 1077, 1985 Miss. LEXIS 1983 (Miss. 1985).

That one convicted on a plea of guilty may not appeal does not entitle him to habeas corpus upon the ground that the plea was fraudulently obtained; his remedy is by writ of coram nobis. Rogers v. Jones, 240 Miss. 610, 128 So. 2d 547, 1961 Miss. LEXIS 491 (Miss. 1961).

Where circuit court had no jurisdiction, plea of guilty had no effect and did not prevent appeal to supreme court. Bass v. State, 159 Miss. 132, 131 So. 830, 1931 Miss. LEXIS 21 (Miss. 1931).

6. Coram nobis.

The trial court had exclusive jurisdiction to hear and determine defendant's petition for a writ of habeas corpus following his conviction for business burglary, where defendant's conviction and sentence had not been appealed to the Mississippi Supreme Court for affirmance or dismissal. McDonall v. State, 465 So. 2d 1077, 1985 Miss. LEXIS 1983 (Miss. 1985).

That one convicted on a plea of guilty may not appeal does not entitle him to habeas corpus upon the ground that the plea was fraudulently obtained; his remedy is by writ of coram nobis. Rogers v. Jones, 240 Miss. 610, 128 So. 2d 547, 1961 Miss. LEXIS 491 (Miss. 1961).

Writ of error coram nobis may be granted by judges of supreme court, although trial judge refused to grant writ and although writ is not in aid of appellate jurisdiction of supreme court, since writ is remedial. Buckler v. State, 173 Miss. 350, 161 So. 683, 1935 Miss. LEXIS 224 (Miss. 1935).

Refusal of supreme court to grant an appeal from trial court's refusal to grant writ of error coram nobis did not leave petitioner without further remedy, since petitioner could apply to judge of supreme court for such writ. Buckler v. State, 173 Miss. 350, 161 So. 683, 1935 Miss. LEXIS 224 (Miss. 1935).

7. Notice requirements.

While an appeal from a sentence imposed pursuant to a guilty plea was not equivalent to an appeal from the guilty plea itself, the circuit court was not required to inform petitioner of the right before amendment of Miss. Code Ann. § 99-35-101 to a direct appeal of his sentence after he entered a guilty plea. Nick v. State, 62 So. 3d 409, 2010 Miss. App. LEXIS 624 (Miss. Ct. App. 2010), cert. denied, 62 So. 3d 974, 2011 Miss. LEXIS 271 (Miss. 2011).

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Absence of counsel for accused at time of sentence as requiring vacation thereof or other relief. 20 A.L.R.2d 1240.

Jurisdiction to proceed with trial of criminal case pending appeal from order overruling demurrer, motion to quash, or similar motion for dismissal. 89 A.L.R.2d 1236.

Appealability of order arresting judgment in criminal case. 98 A.L.R.2d 737.

Court's presentence inquiry as to, or consideration of, accused's intention to appeal, as error. 64 A.L.R.3d 1226.

Judgment favorable to convicted criminal defendant in subsequent civil action arising out of same offense as ground for reversal of conviction. 96 A.L.R.3d 1174.

Adequacy of defense counsel's representation of criminal client regarding appellate and postconviction remedies. 15 A.L.R.4th 582.

Prosecutor's reference in opening statement to matters not provable or which he does not attempt to prove as ground for relief. 16 A.L.R.4th 810.

Prosecution or conviction of one conspirator as affected by disposition of case against coconspirators. 19 A.L.R.4th 194.

Consequences of prosecution's failure to file timely brief in appeal by accused. 27 A.L.R.4th 213.

Right of defendant in state court to bail pending appeal from conviction–modern cases. 28 A.L.R.4th 227.

Emotional manifestations by victim or family of victim during criminal trial as ground for reversal, new trial, or mistrial. 31 A.L.R.4th 229.

Communication between court officials or attendants and jurors in criminal trial as ground for mistrial or reversal–post-Parker cases. 35 A.L.R.4th 890.

Prosecutor's appeal in criminal case to radical, national, or religious prejudice as ground for mistrial, new trial, reversal, or vacation of sentence–modern cases. 70 A.L.R.4th 664.

Effect of escape by, or fugitive status of, state criminal defendant on availability of appeal or other post-verdict or post-conviction relief – State cases. 105 A.L.R.5th 529.

Failure to appeal denial of double jeopardy claim within time limits of Rule 4, Federal Rules of Appellate Procedure, as precluding review of claim on appeal of conviction at retrial. 51 A.L.R. Fed. 770.

Am. Jur.

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§ 99-35-103. When state or municipality may appeal.

The state or any municipal corporation may prosecute an appeal from a judgment of the circuit court in a criminal cause in the following cases:

(a) From a judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime; but such appeals shall not bar or preclude another prosecution of the defendant for the same offense.

(b) From a judgment actually acquitting the defendant where a question of law has been decided adversely to the state or municipality; but in such case the appeal shall not subject the defendant to further prosecution, nor shall the judgment of acquittal be reversed, but the Supreme Court shall nevertheless decide the question of law presented.

(c) From a ruling adverse to the state or municipality in every case in which the defendant is convicted and prosecutes an appeal; and the case shall be treated as if a cross appeal had been formally presented by the state. All questions of law thus presented shall be decided by the Supreme Court.

HISTORY: Codes, 1892, § 39; Laws, 1906, § 40; Hemingway's 1917, § 16; Laws, 1930, § 19; Laws, 1942, § 1153; Laws, 1991, ch. 573, § 140, eff from and after July 1, 1991.

Cross References — Content of record on appeal, see Miss. R. App. P. 10.

JUDICIAL DECISIONS

ANALYSIS

1. Cases appealable in general.
2. Prohibition against appeals.
3. Judgment quashing indictment, etc.
4. Appeal on question of law.
5. Appeal by defendant; cross appeal.
6. Disposition of appeal.

1. Cases appealable in general.

Circuit court properly denied the State's second motion to dismiss because the relief requested on appeal was moot and outside of the appellate court's realm for consideration, the appeal was not just about a "question of law" inasmuch as the issue surrounding the bonds and what was required by the current rules of criminal procedure was resolved in the appellate court's original opinion, which made it clear that the bonds were sufficient to confer jurisdiction, that the circuit court had the authority to amend the bond, to address the complaints of the State, and proceed to the merits at its discretion, which was exactly what the circuit court did, and there were no further questions of law to be addressed in the case. Kemper Cty. v. Parks, 281 So. 3d 208, 2019 Miss. App. LEXIS 106 (Miss. Ct. App. 2019).

Order enjoining grand jury's investigation of district attorney's alleged receipt of improper payments was appealable by state. State v. Pacific (Ex parte Jones County Grand Jury, First Judicial Dist.), 705 So. 2d 1308, 1997 Miss. LEXIS 747 (Miss. 1997).

The Supreme Court has subject matter jurisdiction to hear an appeal by the State from a dismissal with prejudice for violation of § 99-17-1's 270-day rule under subsection (a) of this section. State v. Harrison, 648 So. 2d 66, 1994 Miss. LEXIS 633 (Miss. 1994).

The State's cross appeal was proper under subsection (c) of this section where the State alleged that the trial judge exceeded his authority by staying imposition of the jury's sentence of death and imposing in its stead a sentence of life imprisonment without parole. Abram v. State, 606 So. 2d 1015, 1992 Miss. LEXIS 448 (Miss. 1992), overruled in part, Foster v. State, 961 So. 2d 670, 2007 Miss. LEXIS

315 (Miss. 2007), overruled in part, Holly v. Mississippi, 2011 U.S. App. LEXIS 24853 (5th Cir. Miss. Dec. 13, 2011).

There was no statutory authority for an appeal by the State from a circuit court based upon the circuit judge's failure to sentence a defendant to life without parole following his conviction of burglary and proof that he was an habitual offender under § 99-19-83, and therefore the appeal would be dismissed for lack of jurisdiction. State v. Lee, 602 So. 2d 833, 1992 Miss. LEXIS 352 (Miss. 1992).

A person convicted of criminal or civil contempt may appeal to the Supreme Court pursuant to § 11-51-11 and § 11-51-12. Also, a plaintiff in a civil contempt case may appeal by authority of § 11-51-3, which authorizes appeals from final judgments in civil cases. An appeal from a dismissal of a petition for criminal contempt does not lie under subsection (b) of this section; there is no statute authorizing an appeal by the petitioner when a trial court has dismissed a petition for criminal contempt. Common Cause of Mississippi v. Smith, 548 So. 2d 412, 1989 Miss. LEXIS 362 (Miss. 1989).

A State's appeal from an order sustaining a defendant's motion to suppress evidence seized from the trunk of defendant's automobile was interlocutory, thus not authorized by this section, and would be dismissed, where there was no judgment sustaining a demurrer to, or a motion to quash an indictment, or an affidavit charging crime, and where there was no judgment rendered acquitting or convicting defendant. State v. Parks, 415 So. 2d 704, 1982 Miss. LEXIS 2036 (Miss. 1982).

The limitation placed on the state by this section contemplates causes where there is an actual prosecution of a criminal cause to final judgment, and this section did not bar an appeal by the state from an order of the circuit court requiring the presence of the court reporter to transcribe the proceedings of the grand jury. State v. Burrill, 312 So. 2d 1, 1975 Miss. LEXIS 1629 (Miss. 1975).

An appeal by the state was not allowed under this section [Code 1942, § 1153] from the action of a trial court in sustaining defendant's motion, made after the state had rested its case in the prosecution for obtaining money under false pretenses, to exclude the evidence and direct the jury to acquit him on the ground that the proof had failed to show defendant guilty of the crime with which he was charged. State v. Correro, 231 Miss. 155, 94 So. 2d 911, 1957 Miss. LEXIS 499 (Miss. 1957).

State may appeal under this section [Code 1942, § 1153] from adverse rulings on the admission or exclusion of evidence. State v. Sisk, 209 Miss. 174, 46 So. 2d 191, 1950 Miss. LEXIS 377 (Miss. 1950); State v. Jackson, 217 Miss. 412, 64 So. 2d 341, 1953 Miss. LEXIS 444 (Miss. 1953).

This section [Code 1942, § 1153] does not authorize state or municipality to appeal from judgment discharging defendant on ground that proof was insufficient to sustain conviction. State v. Sisk, 209 Miss. 174, 46 So. 2d 191, 1950 Miss. LEXIS 377 (Miss. 1950); State v. Willingham, 86 Miss. 203, 38 So. 334, 1905 Miss. LEXIS 36 (Miss. 1905); Pascagoula v. Cunningham, 141 Miss. 604, 106 So. 886, 1926 Miss. LEXIS 468 (Miss. 1926).

Under this section [Code 1942, § 1153], state may not appeal from an order of trial court in prosecution for unlawful possession of beer, granting defendant's request for peremptory instructions to jury to return verdict of not guilty. State v. Sisk, 209 Miss. 174, 46 So. 2d 191, 1950 Miss. LEXIS 377 (Miss. 1950).

An appeal by the state is not allowable where the court sustains a motion for a directed verdict because of the insufficiency of evidence to support the criminal charge. State v. Blackburn, 34 So. 2d 199 (Miss. 1948).

An appeal does not lie on behalf of the state or a municipality under this section [Code 1942, § 1153] from a judgment of acquittal based upon a directed verdict in favor of a defendant in a criminal case where the peremptory instruction in such case is granted because of the insufficiency of the evidence to sustain the charge made in the affidavit or indictment, even though the question involved on the ruling of the trial court may be a mixed one of law and fact. State v. Ashley, 194 Miss. 110, 11 So. 2d 832, 1943 Miss. LEXIS 45 (Miss. 1943).

The state may not appeal from an acquittal entered on a directed verdict on the court excluding the testimony at the close of the state's evidence. State v. Brooks, 102 Miss. 661, 59 So. 860, 1912 Miss. LEXIS 104 (Miss. 1912).

State is not allowed to appeal in a criminal case except in the specific instances named in Code 1906, § 40 [Code 1942, § 1153], therefore an appeal by the state from a judgment granting bail in a murder case on continuance after indictment is not maintainable. State v. Key, 93 Miss. 115, 46 So. 75, 1908 Miss. LEXIS 62 (Miss. 1908).

State is not given an appeal from judgment of acquittal predicated on a peremptory instruction for defendant, but is given one from rulings of the trial court in admitting testimony of a former conviction in the absence of a plea setting it up as a defense, and in admitting parol proof of proceedings in a justice's court. State v. Ireland, 89 Miss. 763, 42 So. 797, 1906 Miss. LEXIS 79 (Miss. 1906).

The state cannot appeal from a judgment granting a defendant a new trial and setting aside a verdict convicting him because of objections to the argument of the district attorney. State v. Thompson, 86 Miss. 201, 38 So. 321, 1905 Miss. LEXIS 33 (Miss. 1905).

Neither this section [Code 1942, § 1153] nor Code 1906, § 37 [Code 1942, § 1150] authorizes an appeal by a municipality from a judgment of a circuit court discharging one arrested for violating an ordinance of the municipality. City of Water Valley v. Davis, 73 Miss. 521, 19 So. 235, 1895 Miss. LEXIS 156 (Miss. 1895).

This section [Code 1942, § 1153] does not authorize an appeal by the state from a judgment granting bail to one accused of a capital offense. State v. Shrader, 72 Miss. 541, 18 So. 454, 1895 Miss. LEXIS 60 (Miss. 1895).

Only appeals from final judgments are authorized by this section [Code 1942, § 1153]. Appeal by the state from a judgment setting aside a conviction and awarding a new trial will be dismissed by the supreme court on its own motion. State v. McDowell, 72 Miss. 138, 17 So. 213, 1894 Miss. LEXIS 133 (Miss. 1894).

2. Prohibition against appeals.

Statute revealed a clear prohibition, with only limited exceptions, against the State taking an appeal in criminal cases; the prohibition was a clear legislative pronouncement of the policy of Mississippi regarding the conduct of criminal proceedings. State v. Hicks, 806 So. 2d 261, 2002 Miss. LEXIS 22 (Miss. 2002).

3. Judgment quashing indictment, etc.

It was error to dismiss defendant's embezzlement indictment under Miss. Code Ann. § 97-11-29 because defendant had eventually paid for the pistol he was claimed to have embezzled since: (1) the sufficiency of evidence for an indictment could not be challenged before the trial on the merits after the State had presented its case; (2) the State had a right to appeal under Miss. Code Ann. § 99-35-103(a), and dismissal and remand for retrial were proper; (3) § 99-35-103(b) did not apply because neither side sought a bench trial nor stipulated to the facts, there was no risk that the trial judge would decide defendant's guilt at the hearing, and without risk of a determination of guilt, jeopardy did not attach; and (4) neither an appeal nor further prosecution constituted double jeopardy. State v. Parkman, 106 So. 3d 378, 2012 Miss. App. LEXIS 592 (Miss. Ct. App. 2012), cert. denied, 105 So. 3d 326, 2013 Miss. LEXIS 39 (Miss. 2013).

Statute permitting state to appeal from quashing of indictment permits appeal where trial court quashes only capital portion of capital murder indictment; quashing of capital portion is final judgment on capital murder charge, in that judicial labor is at an end with regard to that charge. State v. Berryhill, 703 So. 2d 250, 1997 Miss. LEXIS 532 (Miss. 1997).

The State did not have the authority to appeal from an order granting a judgment notwithstanding the verdict rendered by the trial court to the defendant in a criminal case. State v. Insley, 606 So. 2d 600, 1992 Miss. LEXIS 532 (Miss. 1992).

Under paragraph (a) of this section [Code 1942, § 1153], the supreme court is authorized to review the judgment of the circuit court sustaining a demurrer to an indictment but not one overruling a demurrer thereto, and, accordingly, ruling of the lower court in overruling a demurrer to the indictment cannot be reviewed. State v. Wall, 98 Miss. 521, 54 So. 5, 1910 Miss. LEXIS 91 (Miss. 1910).

4. Appeal on question of law.

Because there was a judgment actually acquitting defendant due to insufficient evidence, the State could appeal any question of law decided adversely against it at trial, but defendant could not face further prosecution on the matter, and his acquittal would not be reconsidered. State v. Rawlings, 196 So. 3d 200, 2016 Miss. App. LEXIS 454 (Miss. Ct. App. 2016).

Where the trial court granted a directed verdict for defendant on the indicted charge of murder (Miss. Code Ann. § 97-3-19(1)(a)) and would not allow the jury to consider whether defendant was guilty of the unindicted crime of manslaughter (Miss. Code Ann. § 97-3-35), the State was allowed to appeal, seeking redress only as to a pure question of law and not for further prosecution of defendant; the State only contended that the trial court's ruling in Harris was distinguishable from the facts in this case. The trial court's reliance on Harris was misplaced; Harris dealt with a lesser offense and had no bearing on a lesser-included offense. State v. Shaw, 880 So. 2d 296, 2004 Miss. LEXIS 1027 (Miss. 2004).

Where the defendant has been acquitted upon the merits of his case by reason of a directed verdict, such acquittal is a bar to any future accusation for the same offense, and an appeal does not subject the defendant to further prosecution. State v. Thornhill, 251 Miss. 718, 171 So. 2d 308, 1965 Miss. LEXIS 896 (Miss. 1965).

Notwithstanding an acquittal, the state may appeal from an adverse ruling on a question of law. State v. Heard, 246 Miss. 774, 151 So. 2d 417, 1963 Miss. LEXIS 504 (Miss. 1963).

This section [Code 1942, § 1153] does not authorize the state to appeal from a judgment of acquittal where judgment was based upon a mixed question of fact and law. State v. Wingo, 221 Miss. 542, 73 So. 2d 107, 1954 Miss. LEXIS 561 (Miss. 1954).

Only a question of law is presented by appeal by state from order sustaining demurrer to indictment. State v. May, 208 Miss. 862, 45 So. 2d 728, 1950 Miss. LEXIS 306 (Miss. 1950).

Where judgment acquitted defendant of conspiracy to defraud state of gasoline excise taxes, state had right of appeal under paragraph (b) of this section [Code 1942, § 1153]. State v. Billups, 179 Miss. 352, 174 So. 50, 1937 Miss. LEXIS 10 (Miss. 1937).

Municipality may prosecute appeal to supreme court from judgment actually acquitting defendant under ordinance, where question of law has been decided adversely. City of Lumberton v. Frederick, 165 Miss. 456, 143 So. 488, 1932 Miss. LEXIS 275 (Miss. 1932).

Acquittal of defendant of violation of ordinance on ground ordinance was invalid held adverse determination of question of law, entitling municipality to appeal. City of Lumberton v. Frederick, 165 Miss. 456, 143 So. 488, 1932 Miss. LEXIS 275 (Miss. 1932).

Appeal from judgment of acquittal lies only when law question is distinctly unmixed with decision on facts. Pascagoula v. Delmas, 157 Miss. 619, 128 So. 743, 1930 Miss. LEXIS 335 (Miss. 1930).

Where acquittal, pursuant to instruction, of charge of violating ordinance permitting animals to run at large resulted because city could not prove cattle had been within city limits before, and therefore decision was mixed with questions of fact, no appeal lies. Pascagoula v. Delmas, 157 Miss. 619, 128 So. 743, 1930 Miss. LEXIS 335 (Miss. 1930).

Appeal from judgment of acquittal pursuant to instruction does not present law question for supreme court's decision. Pascagoula v. Delmas, 157 Miss. 619, 128 So. 743, 1930 Miss. LEXIS 335 (Miss. 1930).

Instruction in a criminal case directing jury to find defendant not guilty does not present a question of law for the decision of the supreme court on appeal by the state. State v. Bourdon, 126 Miss. 877, 89 So. 769, 1921 Miss. LEXIS 88 (Miss. 1921).

Appeal by the state from judgment discharging defendant for insufficiency of evidence presents no question of law for determination by the supreme court. State v. Adams, 123 Miss. 514, 86 So. 337, 1920 Miss. LEXIS 49 (Miss. 1920).

Acquittal on the ground that the "evidence did not show the offense charged," did not present a "question of law" from which a municipality could appeal. City of Jackson v. Harland, 112 Miss. 41, 72 So. 850, 1916 Miss. LEXIS 60 (Miss. 1916).

Where defendant's appeal from a conviction in the municipal court on a charge of violating Code 1906, § 1205, and a municipal ordinance, was tried before the circuit judge on an agreed statement of facts, a discharge of defendant by the circuit judge on the ground that the "evidence did not show the offense charged" did not present a question of law. City of Jackson v. Harland, 112 Miss. 41, 72 So. 850, 1916 Miss. LEXIS 60 (Miss. 1916).

Whether the court erred in instructing the return of a verdict of acquittal, on a question of law, is subject to review on the state's appeal, there being a judgment actually acquitting accused, and a question of law decided adversely to the state. State v. Wall, 98 Miss. 521, 54 So. 5, 1910 Miss. LEXIS 91 (Miss. 1910).

Appeal can be taken only on a question of law, and not on a question of fact. City of Gulfport v. Stratakos, 90 Miss. 489, 43 So. 812 (1907).

5. Appeal by defendant; cross appeal.

Supreme court should refuse to review adverse ruling of trial judge holding that extradition proceedings were as matter of law insufficient both as to form and substance where respondents failed to reserve an exception or file a cross assignment of error in regard to adverse ruling. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

The purpose of paragraph (c) of this section [Code 1942, § 1153] is to provide an inexpensive, summary, simple method of cross appeal, and the direct appeal compels the supreme court to decide all questions of law ruled adversely to the state where the record discloses the ruling and the exception. Thomas v. State, 73 Miss. 46, 19 So. 195, 1895 Miss. LEXIS 139 (Miss. 1895).

Where a sentence as for a felony was set aside and one imposed as for a misdemeanor, and the state excepted, upon appeal by the defendant from the second sentence, the action of the trial court will be reviewed by the supreme court as if a cross appeal had been formally prosecuted by the state. Thomas v. State, 73 Miss. 46, 19 So. 195, 1895 Miss. LEXIS 139 (Miss. 1895).

6. Disposition of appeal.

While the circuit court, pursuant to Miss. Code Ann. § 99-35-103(b), could have decided the question of law raised by the prosecution on appeal, it erred by reversing defendant's acquittal on a charge of driving under the influence (DUI) second offense, granting the prosecution's motion to amend the charge to DUI first offense (which the lower court had denied), and affirming a conviction for DUI first offense which the lower court had not entered. Jamison v. City of Carthage, 864 So. 2d 1050, 2004 Miss. App. LEXIS 92 (Miss. Ct. App. 2004).

Where defendant was acquitted of selling cocaine, the trial court erred by not allowing the State to make a Batson objection based on defendant's discriminatory peremptory challenges of Caucasian panel members, and by giving a "two theory" jury instruction in a direct evidence case; however, under Miss. Code Ann. § 99-35-103(b), the judgment of acquittal could not be reversed. State v. Rogers, 847 So. 2d 858, 2003 Miss. LEXIS 285 (Miss. 2003).

On appeal by state from an order of circuit court sustaining defendant's demurrer to indictment for embezzlement, defendant having been ordered held under same bond pending possible action of another grand jury, supreme court will, in addition to reversing action of lower court in sustaining demurrer, overrule demurrer and remand cause for trial on indictment. State v. May, 208 Miss. 862, 45 So. 2d 728, 1950 Miss. LEXIS 306 (Miss. 1950).

The supreme court can neither affirm nor reverse a judgment based on the not-guilty verdict of a jury where the sole defense in a criminal prosecution is insanity. State v. Goering, 200 Miss. 585, 28 So. 2d 248, 1946 Miss. LEXIS 328 (Miss. 1946).

On appeal by state under paragraph (b) of this section [Code 1942, § 1153], the supreme court could not reverse judgment acquitting a defendant, though trial court improperly excluded certain evidence offered by state. State v. Johnson, 166 Miss. 591, 148 So. 389, 1933 Miss. LEXIS 392 (Miss. 1933).

Where accused has been re-indicted for the identical crime, an appeal from a judgment sustaining a demurrer to the original indictment will be dismissed. State v. Straughter, 102 Miss. 569, 59 So. 844, 1912 Miss. LEXIS 90 (Miss. 1912).

On appeal by municipality under paragraph (b) of this section [Code 1942, § 1153], opinion will be announced, but case will neither be reversed nor affirmed. City of Greenwood v. Jones, 91 Miss. 728, 46 So. 161, 1907 Miss. LEXIS 212 (Miss. 1907).

Where judgment quashing an indictment is reversed, the case will be remanded and a new trial ordered on the same indictment. State v. Bacon, 77 Miss. 366, 27 So. 563, 1899 Miss. LEXIS 78 (Miss. 1899).

RESEARCH REFERENCES

ALR.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance-modern status. 11 A.L.R.4th 399.

CJS.

24 C.J.S., Criminal Law §§ 2342, 2343, 2346 et seq.

§ 99-35-105. Prepayment of costs; appeal without prepayment; reimbursement of successful appellants.

Appeals in criminal cases shall not stay the judgment or sentence appealed from unless the appellant shall prepay all of the costs in the lower court, including the cost of preparing the record of the proceedings in the trial court and the fee prescribed in Section 25-7-3, to the clerk of the lower court. If the appellant shall make affidavit that he is unable to prepay the costs, he shall have an appeal without prepayment of costs; and his appeal shall stay the judgment appealed from. It shall be the responsibility of the county in which the conviction was taken to timely prepay all costs when an indigent appellant makes an affidavit that he is unable to make such payments.

It shall be the duty and obligation of the county to reimburse a successful appellant in a criminal case for court costs, including the cost of preparing the record of the proceedings in the trial court.

HISTORY: Codes, Hutchinson's 1848, ch. 63, art. 2(149); 1857, ch. 64, art. 308; 1871, § 2842; 1880, § 2335; 1892, § 61; 1906, § 62; Hemingway's 1917, § 38; 1930, § 41; 1942, § 1175; Laws, 1978, ch. 335, § 36, eff from and after July 1, 1978.

Editor's Notes — Laws of 1978, ch. 335, § 40, provides as follows:

"SECTION 40. The provisions of this act shall not apply to any case wherein a petition for appeal has been presented prior to the day this act takes effect, and such appeals shall proceed to final determination with costs collected as though these statutes relating to costs had not been amended, but the provisions hereof shall apply to all other cases then pending and hereafter filed."

Cross References — Affidavit to establish poverty in civil suit, see § 11-53-17.

Provision for additional cost to create court education and training fund, see §§ 37-26-1 et seq.

Motions and petitions filed in supreme court for release on appearance bond pending certiorari petition to the United States Supreme Court on the upholding of a criminal conviction by the supreme court, see Miss. R. App. P. 41.

JUDICIAL DECISIONS

1. In general.

A trial court has no authority to deny an appeal to a defendant who files a pauper's affidavit in conformity with this section [Code 1942, § 1175] in lieu of a bond for costs. Tarrants v. State, 219 So. 2d 170, 1969 Miss. LEXIS 1421 (Miss. 1969).

Appeal bond may be amended after 6 months from taking appeal, to correct bona fide omission of condition to pay cost. Wallace v. State, 149 Miss. 198, 115 So. 342, 1928 Miss. LEXIS 25 (Miss. 1928).

Appeal lies from conviction of a misdemeanor, where the appellant executes a bail bond, and an affidavit in forma pauperis, without the execution of an appeal bond, or a deposit of sufficient money to pay the costs of the appeal. Husbands v. State, 105 Miss. 513, 62 So. 278, 1913 Miss. LEXIS 208 (Miss. 1913).

In order to take appeal defendant must not only file affidavit under this section [Code 1942, § 1175], but she must surrender herself to the proper officer, or execute a bail bond conditioned according to Code 1892, § 64 [Code 1942, § 1178]. Roberts v. Port Gibson, 89 Miss. 75, 42 So. 540, 1906 Miss. LEXIS 50 (Miss. 1906).

Where sentence in a capital case is imprisonment for life, on an appeal the defendant, to have a stay of the sentence, must give bond to secure payment of the jail fees to accrue pending the appeal. Board of Supervisors v. Worrell, 67 Miss. 154, 6 So. 629, 1889 Miss. LEXIS 12 (Miss. 1889).

The bond, affidavit, or deposits for costs is required in order to stay the judgment in all criminal cases. Taking bail and discharging the prisoner after conviction on appeal is unauthorized until the section [Code 1942, § 1175] is complied with. Lum v. State, 66 Miss. 389, 5 So. 689, 1889 Miss. LEXIS 111 (Miss. 1889).

RESEARCH REFERENCES

ALR.

Right of indigent defendant in criminal case to aid state as regards new trial or appeal. 55 A.L.R.2d 1072.

Abatement of state criminal case by accused's death pending appeal of conviction–modern cases. 80 A.L.R.4th 189.

Am. Jur.

5 Am. Jur. 2d, Appellate Review §§ 387 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Forms 491 et seq. (proceedings relating to security in reviewing court).

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Forms 481-485 (inability to give security).

CJS.

4 C.J.S., Appeal and Error §§ 429 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December, 1979.

§ 99-35-107. Deposit for costs; security for jail fees.

A deposit with the clerk of the court from which an appeal is taken of a sum of money sufficient to cover the costs accrued, and to accrue, the amount of which to be determined by the judge, may be made by the appellant with the posting of his appearance bond, and shall serve to stay execution of sentence until the clerk shall compile the trial court costs and file the cost bill required in criminal cases; and any security for jail fees which the sheriff shall certify to the clerk to be satisfactory to him, shall be sufficient, and the sheriff shall not thereafter be entitled to look to the county for such jail fees.

HISTORY: Codes, 1880, § 2336; 1892, § 62; 1906, § 63; Hemingway's 1917, § 39; 1930, § 42; 1942, § 1176; Laws, 1978, ch. 335, § 37, eff from and after July 1, 1978.

Cross References — Security for costs in civil action of habeas corpus, see § 11-43-47.

Deposit for costs in civil cases, see § 11-51-29.

Certification in transcript of deposit for costs, and disposition of deposit on termination of case, see § 11-51-69.

Duty of sheriff with respect to bail bond, see §§ 99-5-7, 99-5-15, 99-5-17.

Application of amendment relating to prepayment of lower court costs and supreme court filing fee, see § 99-35-105 Editor's note.

RESEARCH REFERENCES

Am. Jur.

5 Am. Jur. 2d, Appellate Review §§ 387 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Forms 431 et seq. (deposits in lieu of bond).

CJS.

4 C.J.S., Appeal and Error §§ 441, 442.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December, 1979.

§ 99-35-109. Bail after conviction of misdemeanor.

In all cases of conviction of a misdemeanor, an appeal taken shall stay the judgment appealed from. The appellant, if sentenced to imprisonment for his offense, or to stand committed until his fine and costs shall be paid, may be relieved from such imprisonment or commitment, pending his appeal, by paying the trial court costs and giving bond, with sufficient resident sureties or one or more guaranty or surety companies authorized to do business in this state, to be approved by the clerk of the court from which the appeal is taken, payable to the state in the penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), to be determined by such clerk, with reference to the grade of the offense, as indicated by the judgment, and the ability of the appellant to give bond, conditioned to surrender himself to the sheriff of the county to suffer the judgment or sentence, if it shall be affirmed by the supreme court, within one (1) week after the judgment of affirmance shall be certified to the circuit court, or to appear before the circuit court at the next term after a judgment of reversal in such case shall be certified to the circuit court, to answer the charge of the state, and so to continue until discharged.

HISTORY: Codes, 1880, § 2339; 1892, § 64; 1906, § 65; Hemingway's 1917, § 41; 1930, § 44; 1942, § 1178; Laws, 1978, ch. 335, § 38, eff from and after July 1, 1978.

Cross References — Bail generally, see §§ 99-5-1 et seq.

Application of amendment relating to prepayment of lower court costs and supreme court filing fee, see § 99-35-105 Editor's note.

Circuit judge or supreme court judge may fix amount of bond to be given under this section, see § 99-35-111.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Bail pending appeal, see MRCrP 8.3.

JUDICIAL DECISIONS

1. In general.

If appellant complied with bail bond which required him to surrender to sheriff within one week after judgment of affirmance by supreme court was certified to circuit court, and suggestions of error in affirmance were overruled June 5, his sentence of 90 days would not include month of February and was not invalid as exceeding three calendar months, the maximum sentence provided for conviction of possession of intoxicating liquor. Langley v. State, 170 Miss. 520, 155 So. 682, 1934 Miss. LEXIS 179 (Miss. 1934).

In view of this section [Code 1942, § 1178], a peace bond of $2,500 required of one convicted of possessing liquor held excessive. McCluney v. State, 162 Miss. 333, 138 So. 356, 1931 Miss. LEXIS 118 (Miss. 1931).

Appeal lies from conviction of a misdemeanor, where the appellant executes a bail bond and an affidavit in forma pauperis, without the execution of an appeal bond, or a deposit of sufficient money to pay the costs of the appeal. Husbands v. State, 105 Miss. 513, 62 So. 278, 1913 Miss. LEXIS 208 (Miss. 1913).

An appellant may be released on bail pending an appeal under this section [Code 1942, § 1178], but he must also give a bond or make a deposit for costs, or make affidavit of inability to do so. If this is not done the appeal will not be entertained, and he cannot be discharged without complying with both sections [Code 1942, §§ 1175, 1178]. Lum v. State, 66 Miss. 389, 5 So. 689, 1889 Miss. LEXIS 111 (Miss. 1889).

OPINIONS OF THE ATTORNEY GENERAL

A trial court judge may not impose a peace bond in excess of one thousand dollars ($1,000.00). Moulder, August 10, 1998, A.G. Op. #98-0453

RESEARCH REFERENCES

ALR.

Right of defendant in state court to bail pending appeal from conviction-modern cases. 28 A.L.R.4th 227.

Am. Jur.

4 Am. Jur. 2d, Appellate Review §§ 206, 207.

CJS.

4 C.J.S., Appeal and Error §§ 441, 442.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December, 1979.

§ 99-35-111. Bail after conviction of misdemeanor; judge may fix amount of bond.

The circuit judge of the district or presiding on the trial, or a supreme judge, may, in any case, fix the amount of the bond to be given under Section 99-35-109, and the clerk shall act accordingly. Any such bail bond shall be filed by the clerk, and carefully preserved among the papers of the case.

HISTORY: Codes, 1880, § 2340; 1892, § 65; 1906, § 66; Hemingway's 1917, § 42; 1930, § 45; 1942, § 1179.

Cross References — Constitutional provision for bail, see Miss. Const., Art. 3, § 29.

Bail generally, see §§ 99-5-1 et seq.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Bail pending appeal, see MRCrP 8.3.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Appellate Review §§ 206, 207.

8 Am. Jur. 2d, Bail and Recognizance §§ 19, 20, 27 et seq.

CJS.

4 C.J.S., Appeal and Error §§ 441, 442.

§ 99-35-113. Failure of appellant on bond to appear in misdemeanor cases.

If the judgment in a case of misdemeanor be affirmed, and the appellant shall not surrender himself to the proper sheriff, according to the condition of his bail-bond, or shall not appear before the circuit court as the case may require, said court shall proceed as in any other case of forfeited bail-bond. All proper process shall be issued to enforce the judgment of the supreme court in the case by the clerk of the circuit court.

HISTORY: Codes, 1880, § 1438; 1892, § 4376; 1906, § 4942; Hemingway's 1917, § 3218; 1930, § 3401; 1942, § 1985.

Cross References — Bail generally, see §§ 99-5-1 et seq.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Bail pending appeal, see MRCrP 8.3.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. 2d, Bail and Recognizance §§ 19, 20, 27 et seq.

CJS.

8 C.J.S., Bail §§ 253, 254 et seq.

§ 99-35-115. Bail after conviction of felony; application for emergency hearing upon denial of bail.

(1) A person convicted of felony child abuse, sexual battery of a minor or any offense in which a sentence of death or life imprisonment is imposed shall not be entitled to be released from imprisonment pending an appeal to the Supreme Court.

(2)(a) A person convicted of any felony, not enumerated in subsection (1), shall be entitled to be released from imprisonment on bail pending an appeal to the Supreme Court, within the discretion of a judicial officer, if the convict shows by clear and convincing evidence that release of the convict would not constitute a special danger to any other person or to the community, and that a condition or a combination of conditions may be placed on release that will reasonably assure the appearance of the convict as required, and only when the peculiar circumstances of the case render it proper.

(b) If bail is denied, the judicial officer shall place the reasons for such denial of record in the case.

(c) For the purposes of this section, "judicial officer" means the trial court or trial judge, a judge of the district in which the conviction occurred, the Supreme Court or a justice of the Supreme Court in vacation of the court.

(d) The victim or family of a victim shall be entitled to submit a written statement objecting to the granting of release on bail pending appeal.

HISTORY: Codes, 1880, § 2341; 1892, § 66; 1906, § 67; Hemingway's 1917, §§ 43, 44, 45; 1930, § 46; 1942, § 1180; Laws, 1916, ch. 217; Laws, 1987, ch. 350; Laws, 1997, ch. 527, § 1; Laws, 2005, ch. 350, § 1, eff from and after passage (approved Mar. 14, 2005).

Cross References — Constitutional provision for bail, see Miss. Const. Art. 3, § 29.

Bail generally, see §§ 99-5-1 et seq.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Post-conviction bail, see MRCrP 8.3.

JUDICIAL DECISIONS

ANALYSIS

1. Authority to grant bail in general.
2. Persons entitled to bail.
3. Denial of bond.
4. Revocation of bond.
5. Proceedings.

1. Authority to grant bail in general.

Inmate was not entitled to bail, pursuant to Miss. Code Ann. § 99-35-115, during the appeal of the denial of the inmate's petition for post-conviction relief, as, under Miss. Code Ann. § 99-39-25(4), bail is not permitted for such prisoners. Atwell v. State, 848 So. 2d 190, 2003 Miss. App. LEXIS 348 (Miss. Ct. App. 2003).

Trial judge fixing defendant's bail bond at $100,000 was not manifestly wrong where defendant had been sentenced to 20 years for aggravated assault and 10 years for shooting into dwelling house, following victim breaking off engagement to defendant, as result of which he shot minimum of 25 bullets into home while she was sleeping; although she survived her left arm and leg were amputated and she suffered loss of use of right elbow and shoulder; additionally, bullets from his rifle also entered bedroom of victim's parents, and at sentencing trial judge stated that defendant was one of the most dangerous criminal defendants he had ever witnessed. Shook v. State, 511 So. 2d 1386, 1987 Miss. LEXIS 2707 (Miss. 1987).

The circuit court had concurrent jurisdiction with the appellate court, for purposes of setting an appearance bond under this section, over a defendant convicted of attempted armed robbery, even though defendant's appeal had already been perfected. State v. Maples, 445 So. 2d 540, 1984 Miss. LEXIS 1617 (Miss. 1984).

The test whether bail should be granted pending petitioner's appeal for conviction of crime is to be determined by whether the testimony shows that it is probable that confinement has produced or is likely to produce, fatal or serious results and there must be strong grounds for apprehending a fatal result or the permanent, substantial impairment of health. Ex parte Willette, 219 Miss. 785, 63 So. 2d 52, 1953 Miss. LEXIS 402 (Miss. 1953).

Chancellor in habeas corpus proceeding cannot grant bail pending appeal to the supreme court, as the circuit and supreme courts, and the judges thereof, only can grant bail under this section [Code 1942,

§ 1180]. Leggett v. Vannison, 133 Miss. 22, 96 So. 518, 1923 Miss. LEXIS 106 (Miss. 1923).

Order admitting one convicted of felony to bail, made by a judge without authority is void, and the supreme court may order the arrest of accused pending appeal. Marley v. State, 109 Miss. 169, 68 So. 75, 1915 Miss. LEXIS 131 (Miss. 1915).

The judge of a judicial district to which one convicted of a felony in another judicial district was removed pending appeal, may not admit him to bail. Marley v. State, 109 Miss. 169, 68 So. 75, 1915 Miss. LEXIS 131 (Miss. 1915).

2. Persons entitled to bail.

Trial court followed the requirements of this statute in evaluating defendant's request to remain on bond pending appeal because the trial court found that defendant was a repeat offender of the crimes for which he was convicted, and there was no way to prohibit that kind of activity if he were to remain on bond pending appeal. Fairley v. State, 275 So. 3d 1012, 2019 Miss. LEXIS 180 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 1241, 206 L. Ed. 2d 229, 2020 U.S. LEXIS 892 (U.S. 2020).

It was not an abuse of discretion to deny defendant's request for post-conviction bail because defendant provided no assurances that a confidential informant would not be endangered. Johnson v. State, 194 So. 3d 191, 2016 Miss. App. LEXIS 384 (Miss. Ct. App. 2016).

Denial of an appeal bond under Miss. Code Ann. § 99-35-115(2) was within the discretion of the trial court due to a finding that defendant posed a danger to himself due to a suicide threat; moreover, the trial court found that the area was ripe for Medicaid fraud crimes due to a hurricane. Woods v. State, 965 So. 2d 725, 2007 Miss. App. LEXIS 539 (Miss. Ct. App. 2007).

Because defendant was properly convicted of murder, rather than manslaughter, since he acted with deliberate design when he shot his wife at her place of employment, he was ineligible for an appeal bond under Miss. Code Ann. § 99-35-115. Bennett v. State, 956 So. 2d 964, 2006 Miss. App. LEXIS 675 (Miss. Ct. App. 2006), cert. denied, 2007 Miss. LEXIS 293 (Miss. May 17, 2007).

Trial court did not erroneously deny defendant's motion for an appeal bond pursuant to Miss. Code Ann. § 99-35-115(2)(a) because the trial court considered him a danger to the community due to his criminal history. Further, the denial of post-conviction bail to defendant was well within the trial court's discretion. Busick v. State, 906 So. 2d 846, 2005 Miss. App. LEXIS 57 (Miss. Ct. App. 2005), cert. denied, 2005 Miss. LEXIS 396 (Miss. June 23, 2005).

Although a defendant was indigent, had family ties in the county, and had made all court appearances prior to conviction while under $1,000 bail, the trial court in dismissing the defendant's petition for a writ of habeas corpus was not manifestly wrong in refusing to reduce the defendant's bail below $3,000 or to release the defendant on his own recognizance, where the defendant had been convicted of two charges of aggravated assault, crimes of violence, and sentenced to concurrent terms of seven years. Bumphis v. State, 405 So. 2d 116, 1981 Miss. LEXIS 2232 (Miss. 1981).

Where evidence showed that continued confinement would produce or was likely to produce, fatal or serious results to 74-year-old prisoner who was suffering from bronchial asthma and cardiac asthma, the court was authorized to use its discretion to release a prisoner pending appeal from conviction. Ex parte Willette, 219 Miss. 785, 63 So. 2d 52, 1953 Miss. LEXIS 402 (Miss. 1953).

If any person convicted of felony other than treason, murder, rape, arson, burglary and robbery, is ready to give bail pending appeal, he is entitled to it, and it is error to commit him to jail; duty of the trial judge to grant bail and fix amount thereof then and there. Crosby v. State, 125 Miss. 433, 88 So. 3, 1921 Miss. LEXIS 136 (Miss. 1921).

Where only defense of relator, accused of murder, was temporary insanity and the first trial resulting in a conviction was set aside, and the second resulted in a mistrial, relator is not entitled to admission to bail. State v. Gordon, 105 Miss. 454, 62 So. 431, 1913 Miss. LEXIS 231 (Miss. 1913).

Where defendant killed a city marshal, attempting in the lawful execution of his duties as a peace officer of the city to arrest him, he is not entitled to bail. Ex parte Carter, 103 Miss. 302, 60 So. 324, 1912 Miss. LEXIS 173 (Miss. 1912).

Where evidence does not show that the short confinement in jail before determination of appeal would seriously impair his health or imperil his life, bail will be denied. Ex parte Atkinson, 101 Miss. 744, 58 So. 215, 1911 Miss. LEXIS 156 (Miss. 1911).

A person convicted of embezzlement is entitled to bail pending appeal, upon certificates of six physicians showing that confinement will aggravate an illness of accused, though contradicted by certificates of two other physicians. Ex parte Atkinson, 101 Miss. 744, 58 So. 215, 1911 Miss. LEXIS 156 (Miss. 1911).

Refusal of bail pending appeal from conviction for grand larceny of a defendant 49 years of age, because of alleged ill health consisting of heart disease, asthma, catarrh, and indigestion, was not an abuse of discretion. Winegarden v. State, 87 Miss. 264, 39 So. 1013, 1905 Miss. LEXIS 156 (Miss. 1905).

It is improper to admit to bail pending an appeal one convicted of felony because he has a crop which needs his attention and the forced neglect of which will result in his financial ruin, and because his wife is frail and delicate. Bail is a special favor to be granted, not on personal grounds, but under peculiar circumstances to be judged of as a matter of sound judicial discretion. Hill v. State, 64 Miss. 431, 1 So. 494, 1886 Miss. LEXIS 83 (Miss. 1886).

3. Denial of bond.

Circuit court followed the statutory requirements in evaluating defendant's request for an appeal bond and found that he failed to prove that his release would not constitute a special danger to another person or to the community, plus the circuit court noted its previous finding that defendant represented a special danger to the victim, and there was no abuse of discretion in the denial of the bond. Parks v. State, 228 So. 3d 853, 2017 Miss. App. LEXIS 58 (Miss. Ct. App.), cert. denied, 220 So. 3d 977, 2017 Miss. LEXIS 262 (Miss. 2017).

4. Revocation of bond.

There is nothing explicit in this section that would indicate that revocation of an appeal bond is appropriate because of the appellant's subsequent criminal behavior. Lee v. State, 759 So. 2d 1264, 2000 Miss. App. LEXIS 241 (Miss. Ct. App. 2000).

5. Proceedings.

Trial court erred in granting defendant bail pending appeal as the trial court failed to consider the three factors in Miss. Code Ann. § 99-35-115(2)(a) before making its decision. Jones v. State, 905 So. 2d 644, 2004 Miss. App. LEXIS 481 (Miss. Ct. App. 2004), rev'd, 904 So. 2d 149, 2005 Miss. LEXIS 221 (Miss. 2005).

One who has been denied bail may seek his or her liberty via habeas corpus. There is nothing in the Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.), this section, [former] Miss. Sup. Ct. R. 9 or [former] Unif. Crim. R. Cir. Ct. Prac. 7.02 which purports to suspend this right nor could the right ever be suspended except in the limited circumstance provided for by the constitution. Although purely collateral post-conviction remedies attacking a judgment of conviction or sentence should be sought under authority of the Post-Conviction Collateral Relief Act since that Act, in the pure post-conviction collateral relief sense, is arguably "post-conviction habeas corpus renamed," matters of appeal may appropriately be addressed through true habeas corpus actions; bail pending appeal via habeas corpus is incident to the direct review of a conviction or sentence and, therefore, is not affected, prohibited or otherwise governed by the Uniform Post-Conviction Collateral Relief Act. Habeas corpus is one way of seeking liberty following conviction and pending appeal, and statutory and uniform rule procedure another, although the standards for granting or denying bail remain the same in either situation. Walker v. State, 555 So. 2d 738, 1990 Miss. LEXIS 40 (Miss. 1990).

Unsworn certificates of physicians are inadmissible, under a petition for release on bail, pending an appeal, by one convicted of embezzlement. Ex parte Atkinson, 101 Miss. 744, 58 So. 215, 1911 Miss. LEXIS 156 (Miss. 1911).

Supreme court will not consider the merits of a petition to grant bail, pending an appeal of a criminal prosecution. Ex parte Atkinson, 101 Miss. 744, 58 So. 215, 1911 Miss. LEXIS 156 (Miss. 1911).

Power of the supreme court to act on petition for bail pending an appeal in a criminal cause is not to be exercised until after its presentation in a nisi prius court. Ex parte Atkinson, 101 Miss. 744, 58 So. 215, 1911 Miss. LEXIS 156 (Miss. 1911).

OPINIONS OF THE ATTORNEY GENERAL

The provisions of this section would control when a defendant seeks post-conviction bail. Simmons, May 23, 1996, A.G. Op. #96-0238.

RESEARCH REFERENCES

ALR.

Right of defendant in state court to bail pending appeal from conviction–modern cases. 28 A.L.R.4th 227.

Am. Jur.

4 Am. Jur. 2d, Appelate Review §§ 206, 207.

8 Am. Jur. 2d, Bail and Recognizance §§ 19, 20, 27 et seq.

CJS.

4 C.J.S., Appeal and Error §§ 441, 442.

Law Reviews.

Habeas corpus: The “Great Writ” in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-35-117. Bail after conviction of felony; judge to fix amount of bond; judge or sheriff may approve bond.

Where an order shall be made as provided in Section 99-35-115, the court or judge shall designate the amount of the bond to be given; and the clerk of the court where the conviction was had shall take bond of the appellant with resident sureties or one or more guaranty or surety companies authorized to do business in this state, to be approved by him, in the sum fixed by the order, payable to the state, and conditioned for the appearance of the party in the supreme court and circuit court to abide by and perform such sentence or judgment as may be rendered in the case; or the supreme court or circuit court, or any judge of either court making such order for bail, may take and approve the bond required to be given, or it may be taken by the sheriff in whose custody such prisoner may be, and shall be sent to the supreme court. All the provisions of this chapter on the subject of bail, as far as applicable, shall be applicable to bail for the appearance of any person before the supreme court.

HISTORY: Codes, 1880, § 2342; 1892, § 67; 1906, § 68; Hemingway's 1917, § 46; 1930, § 47; 1942, § 1181.

Cross References — Constitutional provision for bail, see Miss. Const., Art. 3, § 29.

Bail generally, see §§ 99-5-1 et seq.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Bail pending appeal, see MRCrP 8.3.

RESEARCH REFERENCES

Am. Jur.
4 Am. Jur. 2d, Appellate Review §§ 206, 207.

8 Am. Jur. 2d, Bail and Recognizance §§ 19, 20, 27 et seq.

§ 99-35-119. Failure of appellant on bond to appear in felony cases.

If the appellant in a case of felony do not appear, according to the conditions of his bail-bond, before the supreme court to receive judgment, the court shall proceed as a circuit court is required to do in case of a failure of a party bound to appear in like cases, and may issue the proper process, and may render judgment, and enforce it by execution, and may issue process to any county for the arrest of the appellant, and have him brought before the court to receive judgment.

HISTORY: Codes, 1880, § 1437; 1892, § 4375; 1906, § 4941; Hemingway's 1917, § 3217; 1930, § 3400; 1942, § 1984.

Cross References — Constitutional provision for bail, see Miss. Const., Art. 3, § 29.

Bail generally, see §§ 99-5-1 et seq.

Bail provisions under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

Bail pending appeal, see MRCrP 8.3.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER § 99-35-123.

6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER § 99-35-123.

6. In general.
Armed robbery conviction and sentence was affirmed on certificate of appeal, where the defendant, who had escaped from jail during pendency of the appeal, failed to file a transcript, and the return day had long since passed. Nealy v. State, 493 So. 2d 1294, 1986 Miss. LEXIS 2607 (Miss. 1986).

RESEARCH REFERENCES

Am. Jur.
8 Am. Jur. 2d, Bail and Recognizance §§ 19, 20, 27 et seq.

CJS.
8 C.J.S., Bail §§ 253, 254 et seq.

§§ 99-35-121 through 99-35-125. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 99-35-121. [Codes, 1892, § 69; 1906, § 70; Hemingway's 1917, § 50; 1930, § 48; 1942, § 1182; Laws, 1920, ch. 147; Laws, 1978, ch. 335, § 39]
§ 99-35-123. [Codes, 1892, § 70; 1906, § 71; Hemingway's 1917, § 51; 1930, § 50; 1942, § 1184]
§ 99-35-125. [Codes, 1892, § 71; 1906, § 72; Hemingway's 1917, § 52; 1930, § 51; 1942, § 1185]

Editor's Notes — Former § 99-35-121 was entitled: Duty of circuit clerk to certify appeals; form of certificate.

Former § 99-35-123 was entitled: Certificate of appeal treated as record of cause in absence of transcript.

Former § 99-35-125 was entitled: Return-day in criminal cases.

§ 99-35-127. Sheriff of Hinds County to receive prisoners; fees.

The sheriff of Hinds County shall receive and safely keep, according to the order of the supreme court, all persons ordered into his custody. The sheriff shall be paid his fees therefor out of the treasury of the proper county, or out of the state appropriation for the judicial department, when certified by the supreme court.

HISTORY: Codes, 1880, § 1439; 1892, § 4377; 1906, § 4943; Hemingway's 1917, § 3219; 1930, § 3402; 1942, § 1986.

Cross References — Person appealing conviction to supreme court being delivered to sheriff of county where supreme court is held, see § 99-19-41.

§ 99-35-129. Execution of sentence; counsel may prosecute appeal.

The sentence of the supreme court in all criminal cases brought before it shall be executed in like manner as if passed by the court in which the prosecution originated. It shall not be necessary to bring any person charged with a criminal offense before the supreme court; but his appeal may be prosecuted by counsel.

HISTORY: Codes, Hutchinson's 1848, ch. 63, class 4, art. 1(9); 1857, ch. 63, art. 15; 1871, § 417; 1880, § 1430; 1892, § 4367; 1906, § 4933; Hemingway's 1917, § 3209; 1930, § 3393; 1942, § 1977.

Cross References — Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Procedure following issuance of mandate by supreme court in criminal cases, see Miss. R. App. P. 41.

§ 99-35-131. Appellant granted credit for time served in prison pending appeal.

In case of an affirmance by the supreme court of a judgment for imprisonment, if the appellant had remained in prison pending the appeal, the time of imprisonment shall be credited to him, but if he have been on bail, the supreme court shall fix the time for the commencement of his imprisonment, under the judgment of affirmance, so as to cause him to suffer the full time of imprisonment fixed by the judgment of the court below.

HISTORY: Codes, 1880, § 1431; 1892, § 4368; 1906, § 4934; Hemingway's 1917, § 3210; 1930, § 3394; 1942, § 1978.

Cross References — Credit for time of prisoner's pre-trial or pre-appeal confinement, see § 99-19-23.

Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

JUDICIAL DECISIONS

1. In general.

Denial of credit for time served in jail and of "good time" to person convicted of felony who appeals judgment of conviction and who remains in jail pending disposition of appeal due to inability to make bond, while allowing credit for time served in jail and award of "good time" to convicted felons serving sentence in county jail without appealing conviction is denial of equal protection, contrary to Fourteenth Amendment. Lacy v. State, 468 So. 2d 63, 1985 Miss. LEXIS 2040 (Miss. 1985).

In fixing of time for the commencement of imprisonment of defendant who was convicted of robbery with firearms, defendant is to be credited on his sentence with such time as he may have been confined in prison pending his appeal to the state supreme court and prior to the perfection of his appeal to the Supreme Court of the United States. Brooks v. State, 213 Miss. 1, 56 So. 2d 9, 1952 Miss. LEXIS 325 (Miss. 1952).

Commencement of imprisonment of defendant, confined in jail during pendency of suggestion of error, held date of affirmance of judgment. Davenport v. State, 143 Miss. 765, 109 So. 789, 1926 Miss. LEXIS 317 (Miss. 1926).

Failure of respondent to prosecute her appeal and order dismissing it did not deprive her of right to credit for time spent in jail pending appeal. Fairley v. State, 114 Miss. 510, 75 So. 374, 1917 Miss. LEXIS 57 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Right to credit for time served under erroneous or void sentence or invalid judgment of conviction necessitating new trial. 35 A.L.R.2d 1283.

§ 99-35-133. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 99-35-133. [Codes, 1880, § 1432; 1892, § 4369; 1906, § 4935; Hemingway's 1917, § 3211; 1930, § 3395; 1942, § 1979]

Editor's Notes — Former § 99-35-133 was entitled: Appearance of appellant in felony case to receive judgment.

§ 99-35-135. Remand and custody of prisoner on affirmance of sentence.

If the judgment be affirmed, on appeal, and the offense be punishable with death, the supreme court shall name the day of execution, and remand the prisoner to the proper county, if necessary; and the sheriff of the county where the prisoner shall have been convicted shall execute the sentence. If the sentence be for confinement in the penitentiary, and the defendant be not present, but in custody, the clerk of the supreme court shall forthwith notify the legal authorities of the penitentiary as in cases of conviction for penitentiary offenses in the circuit court, who shall send for the convict as provided in such cases.

HISTORY: Codes, Hutchinson's 1848, ch. 63, art. 15; 1857, ch. 64, art. 313; 1871, § 2814; 1880, § 1434; 1892, § 4371; 1906, § 4937; Hemingway's 1917, § 3213; 1930, § 3396; 1942, § 1980.

Cross References — Notification of commitment of prisoners, see §§ 99-19-43 et seq.

Execution in capital cases, see §§ 99-19-51 et seq.

Review by Mississippi Supreme Court of imposition of death penalty, see § 99-19-105.

Date of execution of death sentence, see § 99-19-106.

Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

§ 99-35-137. Copy of death sentence to be delivered to sheriff.

It shall be the duty of the clerk of the court to which the mandate of the supreme court for the execution of a prisoner punishable by death is sent, forthwith to deliver to the sheriff of the proper county a copy of the sentence, under the seal of his office, which shall be the warrant of the sheriff for executing the convict.

HISTORY: Codes, 1880, § 1435; 1892, § 4372; 1906, § 4938; Hemingway's 1917, § 3214; 1930, § 3397; 1942, § 1981.

Cross References — Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

§ 99-35-139. Prisoner to be delivered to sheriff of proper county if new trial ordered.

If any person found guilty of a felony shall be in the penitentiary, and the judgment sentencing him shall be reversed and a new trial ordered, he shall be sent to the jail of the county in which he was tried by the legal authorities of the penitentiary, and delivered to the sheriff of the county.

HISTORY: Codes, 1880, § 1436; 1892, § 4373; 1906, § 4939; Hemingway's 1917, § 3215; 1930, § 3398; 1942, § 1982.

Cross References — Disposition of criminal defendant pending appeal, see §§ 99-19-39 through 99-19-42.

§ 99-35-141. Clerk to notify penitentiary of reversals.

The clerk of the supreme court shall, within five days after the reversal of a judgment sentencing any prisoner to the penitentiary, notify the legal authorities of the penitentiary of the reversal, unless it appear of record that the person so sentenced is not in his keeping.

HISTORY: Codes, 1892, § 4374; 1906, § 4940; Hemingway's 1917, § 3216; 1930, § 3399; 1942, § 1983.

§ 99-35-143. Errors which are not grounds for reversal.

A judgment in a criminal case shall not be reversed because the transcript of the record does not show a proper organization of the court below or of the grand jury, or where the court was held, or that the prisoner was present in court during the trial or any part of it, or that the court asked him if he had anything to say why judgment should not be pronounced against him upon the verdict, or because of any error or omission in the case in the court below, except where the errors or omissions are jurisdictional in their character, unless the record show that the errors complained of were made ground of special exception in that court. And no judgment in any case originating in a justice court, or in a municipal court, and appealed to the circuit court, shall be reversed because it may appear in the supreme court transcript that the judgment or record of the said justice or municipal court was not properly certified or was not certified at all, or was missing in whole or in part, unless the record further shows that objection on that account was made in the circuit court, in the absence of which objection in the circuit court there shall be a conclusive presumption that the defects in this clause mentioned did not exist in the circuit court proceedings. Provided however, that the foregoing clause shall not apply to cases wherein a record in the supreme court of the transcript from the justice or municipal court is necessary to a fair understanding of the proceedings in the circuit court.

HISTORY: Codes, 1880, § 1433; 1892, § 4370; 1906, § 4936; Hemingway's 1917, § 3212; 1930, § 3403; 1942, § 1987.

Cross References — Judgment not to be reversed for certain errors, see § 11-3-35.
Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Objections and exceptions, necessity.
3. —Time for taking exceptions.
4. Application to criminal cases, generally.
5. —Indictment and affidavit.
6. —Arraignment and plea.
7. —Matters relating to jury.
8. —Presence of accused.
9. —Pronouncement of sentence.
10. —Venue.
11. —Jurisdiction of trial court.
12. —Matters of pleading.
13. Evidence; generally.
14. —Admission and exclusion.
15. —Weight and sufficiency.
16. —Improper remarks and argument of counsel.
17. Matters pertaining to record.
18. Other acts or crimes.

1. Validity.

This section [Code 1942, § 1987] is constitutional in its application to arraignment and plea-mere steps in the procedure-and in matters not jurisdictional, but cannot cure its jurisdictional errors. Arbuckle v. State, 80 Miss. 15, 31 So. 437, 1902 Miss. LEXIS 219 (Miss. 1902).

The statute impinges on no principle of justice and in no degree violates any right of the accused. Fleming v. State, 60 Miss. 434, 1882 Miss. LEXIS 77 (Miss. 1882); Arbuckle v. State, 80 Miss. 15, 31 So. 437, 1902 Miss. LEXIS 219 (Miss. 1902).

There are no valid constitutional objections to the statute as applied to criminal cases. Ex parte Phillips, 57 Miss. 357, 1879 Miss. LEXIS 89 (Miss. 1879).

2. Objections and exceptions, necessity.

Trial court's instruction to jurors, prior to deliberations, that they could pack their belongings the next morning in anticipation of going home in the event verdict was reached did not warrant mistrial in murder prosecution, where defendant failed to contemporaneously object to such instruction and request corrective action. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Defendant's failure to make contemporaneous objection left unpreserved her claim that trial court violated her rights to due process by moving venireman to end of list of potential jurors. Ballenger v. State, 667 So. 2d 1242, 1995 Miss. LEXIS 451 (Miss. 1995), cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082, 1996 U.S. LEXIS 4177 (U.S. 1996).

An assignment of error based on the prosecutor's comment on the defendant's failure to testify was not procedurally barred for failure to make a contemporaneous objection because the right not to take the witness stand is a fundamental constitutional right. Livingston v. State, 525 So. 2d 1300, 1988 Miss. LEXIS 223 (Miss. 1988).

The rule that any error is waived if no contemporaneous objection is made is equally applicable in a capital case. Cole v. State, 525 So. 2d 365, 1987 Miss. LEXIS 2655 (Miss. 1987), cert. denied, 488 U.S. 934, 109 S. Ct. 330, 102 L. Ed. 2d 348, 1988 U.S. LEXIS 4775 (U.S. 1988).

The rule that the Mississippi Supreme Court will not consider an error raised for the first time on appeal, except in exceptional cases, is founded in part on the fair assumption that an accused, in the face of incarceration, will make and preserve all objections available to him, and the rule is further supported by the Supreme Court's hesitancy to place a trial judge in error on a matter not presented to him for decision. Copeland v. State, 423 So. 2d 1333, 1982 Miss. LEXIS 2401 (Miss. 1982).

The statute does not require a prisoner to except to actions or rulings which are in his favor. Whitten v. State, 61 Miss. 717, 1884 Miss. LEXIS 154 (Miss. 1884).

A case will not be reversed for errors assigned, to which no exceptions were taken in the trial court. Fleming v. State, 60 Miss. 434, 1882 Miss. LEXIS 77 (Miss. 1882); Hardeman v. State, 16 So. 876 (Miss. 1894).

3. —Time for taking exceptions.

Exceptions not jurisdictional in their nature must be seasonably made in the trial court to prevent the application of this section [Code 1942, § 1987].Such objection is not seasonably made when presented for the first time in a motion in arrest of judgment. Short v. State, 82 Miss. 473, 34 So. 353, 1903 Miss. LEXIS 163 (Miss. 1903).

4. Application to criminal cases, generally.

A trial court abused its discretion when it sustained the State's objection to the defense counsel's use during closing argument of a homemade chart as a visual aid to demonstrate to the jury the various standards of proof and belief which fell short of the "beyond a reasonable doubt" standard; while distinctions between reasonable doubt, all possible doubt, beyond a shadow of a doubt, and the like, are not properly the subject of jury instructions, they are permissible during a trial counsel's closing argument. However, the trial court's error was harmless beyond a reasonable doubt since there was nothing depicted on the chart that could not have been generously explored and explained via the spoken word. Heidelberg v. State, 584 So. 2d 393, 1991 Miss. LEXIS 437 (Miss. 1991).

A trial judge's remark at the beginning of trial that defense counsel was appointed, though not particularly commendable, did not amount to reversible error. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

Although an officer was allowed to testify at a suppression hearing even though he had remained in the courtroom during the prior testimony of 3 other officers after the defendant had invoked his rights under Rule 615 Miss. R. Ev., regarding the exclusion of witnesses, the technical violation of Rule 615 was harmless error where nothing in the officer's testimony could reasonably have adversely affected the defendant on any issue pending at the suppression hearing. Stokes v. State, 548 So. 2d 118, 1989 Miss. LEXIS 357 (Miss. 1989), cert. denied, 493 U.S. 1029, 110 S. Ct. 742, 107 L. Ed. 2d 759, 1990 U.S. LEXIS 86 (U.S. 1990).

In a prosecution for sale of cocaine, an informant who was not called by the prosecution but was called by the defense, qualified as an adverse witness and therefore qualified under Rule 611, Miss. R. Ev. The defense would have been allowed wide ranging cross-examination had the prosecution called the witness; it is unfair that the prosecution could defeat any attempt by the defense to present its theory that the defendant was "set up" by the simple expedient of not calling the informant as a witness. Although the court erred in not allowing the defense to call the informant as an adverse witness, the error did not merit reversal where the informant only introduced the defendant and the undercover agent who sold cocaine to the defendant, the informant did not participate in the sale, the informant was not the primary witness and the prosecution did not need the informant's testimony to present a prima facie case against the defendant. Hall v. State, 546 So. 2d 673, 1989 Miss. LEXIS 301 (Miss. 1989).

A defendant who was led into the courtroom wearing leg irons was not entitled to a mistrial where the shackles were removed as soon as the defendant was seated and there was no evidence that any of the jurors had actually seen the shackles. Fisher v. State, 532 So. 2d 992, 1988 Miss. LEXIS 438 (Miss. 1988).

Although the denial of the defendant's right to counsel at a line up was a technical violation of his constitutional right to counsel, it was "harmless constitutional error" where the witnesses' identification of the defendant was based on the their view of the defendant at the time of the crime rather than on the line up identification and there was other overwhelming evidence favoring conviction. Jimpson v. State, 532 So. 2d 985, 1988 Miss. LEXIS 428 (Miss. 1988).

Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal. Brooks v. State, 209 Miss. 150, 46 So. 2d 94, 1950 Miss. LEXIS 373 (Miss. 1950).

Constitutional rights of defendant in prosecution for assault and battery with intent to kill were violated warranting reversal of conviction where proof of state failed to show any authority for seizure of defendant's automobile, the search of his premises and seizure of his coat and pistol, the examination of the person of defendant for a bullet wound and a photograph thereof, the sheriff's comparison of a tire on the automobile with the dim track which he had observed at the scene, and on cross-examination of defendant the state was permitted to ask questions showing guilt of another crime, notwithstanding that record failed to show any objections thereto or that a motion for new trial was made. Brooks v. State, 209 Miss. 150, 46 So. 2d 94, 1950 Miss. LEXIS 373 (Miss. 1950).

Rule that conviction will be affirmed unless it appears that another jury could reasonably reach different verdict upon proper trial than that returned on former one will not be applied to conviction of burglary when prosecuting evidence was not confined to burglary in question but issue was made as to whether defendant had stolen radio on former occasion or had been sassy and impudent to officers in denying his guilt, or in trying to change alleged confession, it being highly prejudicial to colored defendant to show he was impudent to officers. Scarbrough v. State, 204 Miss. 487, 37 So. 2d 748, 1948 Miss. LEXIS 383 (Miss. 1948).

One accused of crime is entitled to another trial when his constitutional right to fair and impartial trial has been violated, regardless of fact that evidence on first trial may have shown him to be guilty beyond every reasonable doubt, and until he has had a fair and impartial trial within the meaning of constitution he is not to be deprived of his liberty by sentence to state penitentiary. Scarbrough v. State, 204 Miss. 487, 37 So. 2d 748, 1948 Miss. LEXIS 383 (Miss. 1948).

In view of this section [Code 1942, § 1987], presumption of innocence disappeared when jury found defendant guilty, and was superseded by presumption that verdict of jury was right and that defendant was guilty. Dean v. State, 173 Miss. 254, 160 So. 584 (Miss. 1935).

The observance of every rule for the protection of the accused is as essential now as before the statute was passed. Its effect is simply a presumption that the judgment of the lower court is correct, and that all things were rightly done. Ex parte Phillips, 57 Miss. 357, 1879 Miss. LEXIS 89 (Miss. 1879); Spivey v. State, 58 Miss. 743, 1881 Miss. LEXIS 30 (Miss. 1881); Fleming v. State, 60 Miss. 434, 1882 Miss. LEXIS 77 (Miss. 1882).

Objections that record failed to show a proper organization of the trial court in a criminal case, or where it was held, or what judge presided, or whether any judge was present, are unavailing in view of this section [Code 1942, § 1987]. Fleming v. State, 60 Miss. 434, 1882 Miss. LEXIS 77 (Miss. 1882).

5. —Indictment and affidavit.

Where the defendant did not expressly set forth specific grounds in his motion for a directed verdict at the conclusion of the state's case, and the trial court did not have an opportunity to pass upon the contention that the defendant was not charged with a crime in the indictment since his full name was not set out therein, this contention was not available to him on appeal. Anselmo v. State, 312 So. 2d 712, 1975 Miss. LEXIS 1656 (Miss. 1975).

Defendant waived his right to assert as error the failure of the minutes of the circuit court to reflect an amendment to the indictment changing the date of the offense, where he asserted such error for the first time on appeal. Looney v. State, 304 So. 2d 44, 1974 Miss. LEXIS 1445 (Miss. 1974).

No reversible error was committed by trial court in permitting the indictment to be amended by changing the first name of the alleged purchaser of marijuana without an order authorizing it actually being entered on the minutes of the court, where defendant failed to note any objection or complaint about the amendment during the trial and the record affirmatively showed the absence of any objection to the amendment as made. Hammond v. Dubard, 279 So. 2d 594, 1973 Miss. LEXIS 1467 (Miss. 1973).

Where the defendant did not object in the trial court to a variance between the indictment and the proof as to the ownership of the store allegedly defrauded by the defendant, he could not complain of the variance on appeal. Ellis v. State, 254 So. 2d 902, 1971 Miss. LEXIS 1531 (Miss. 1971).

In prosecution for grand larceny where the defendant pleaded not guilty, and where the indictment alleged stolen property to be personality of Hattiesburg Hardware Stores, instead of that of a Mississippi corporation of like name, the indictment was not fatal where the accused made no request for directed verdict and made no suggestion of variance between the indictment and the proof, and did not file a demurrer to the indictment. Wiggins v. State, 215 Miss. 441, 61 So. 2d 145, 1952 Miss. LEXIS 583 (Miss. 1952).

Objection that evidence failed to show whether crime was committed before indictment was returned could not be raised for first time on appeal. Wooten v. State, 155 Miss. 726, 125 So. 103, 1929 Miss. LEXIS 349 (Miss. 1929).

Objections to affidavit in criminal case cannot be made for the first time on appeal. Evans v. State, 92 Miss. 34, 45 So. 706, 1907 Miss. LEXIS 24 (Miss. 1907).

Objection that indictment was amended without entry on the minutes of the order allowing it could not be heard for the first time on appeal. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

Where the record shows demurrer to indictment but not the ground of demurrer, this section [Code 1942, § 1987] applies so far as the demurrer is concerned. Coleman v. State, 40 So. 230 (Miss. 1906).

Fact that record in criminal case contained no copy of the indictment did not warrant reversal where the record showed no objection to its absence in the trial court. Spivey v. State, 58 Miss. 743, 1881 Miss. LEXIS 30 (Miss. 1881).

6. —Arraignment and plea.

Where arraignment of accused was not had until after the close of state's case, objection cannot avail defendant to set aside conviction, where he waived proper arraignment by proceeding to trial without objection. Scruggs v. State, 130 Miss. 49, 93 So. 482, 1922 Miss. LEXIS 185 (Miss. 1922).

Arraignment and plea in criminal case are not jurisdictional so that failure of the record to show such arraignment and a plea of not guilty, not specifically excepted to in the trial court, was cured under this section [Code 1942, § 1987]. Arbuckle v. State, 80 Miss. 15, 31 So. 437, 1902 Miss. LEXIS 219 (Miss. 1902).

7. —Matters relating to jury.

In a burglary prosecution, although a prospective juror who expressed uncertainty as to her ability to be a fair juror because of her sympathy for the elderly victim should have been excused for cause, the error was harmless beyond a reasonable doubt where the defendant suffered no actual prejudice. Carr v. State, 555 So. 2d 59, 1989 Miss. LEXIS 505 (Miss. 1989).

In a capital murder prosecution, the court's failure to excuse for cause a potential juror who stated during voir dire that in order for him not to impose the death penalty the defendant would have to prove beyond a reasonable doubt that he should not be executed, was not reversible error where defense counsel used his twelfth peremptory challenge to remove the juror, defense counsel had not exhausted his peremptory challenges and did not challenge anyone else for cause or ask for more peremptory challenges. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

Although the trial court properly condemned the conduct of a district attorney in asking jurors during voir dire whether or not they would vote guilty if the state proved its case and whether they would vote for death if the state proved that the aggravating circumstances outweighed the mitigating circumstances, the district attorney's conduct did not constitute reversible error where, in context with the jury instructions given to the jury by the trial judge, it was clear that the jurors were aware of their proper role in determining guilt and sentence. Williams v. State, 544 So. 2d 782, 1987 Miss. LEXIS 2843 (Miss. 1987).

The exclusion of jurors who would not consider the death penalty under any circumstances was not error. Cole v. State, 525 So. 2d 365, 1987 Miss. LEXIS 2655 (Miss. 1987), cert. denied, 488 U.S. 934, 109 S. Ct. 330, 102 L. Ed. 2d 348, 1988 U.S. LEXIS 4775 (U.S. 1988).

Error of court in refusing to excuse jurors for cause in criminal case will not be considered on appeal where it appears from record that appellant used only five peremptory challenges and hence his peremptory challenges were not exhausted. Bone v. State, 207 Miss. 20, 41 So. 2d 347, 1949 Miss. LEXIS 314 (Miss. 1949).

Defendants could not complain for first time on appeal that grand jury and petit jury were not sworn. Brown v. State, 173 Miss. 542, 158 So. 339, 161 So. 465, 1935 Miss. LEXIS 190 (Miss. 1935).

Murder conviction would not be reversed on the ground that grand jury and petit jury were not sworn, where fact did not affirmatively appear. Brown v. State, 173 Miss. 542, 158 So. 339, 161 So. 465, 1935 Miss. LEXIS 190 (Miss. 1935).

Judgment will not be reversed because juror was not qualified elector. Bowman v. State, 141 Miss. 115, 106 So. 264, 1925 Miss. LEXIS 218 (Miss. 1925).

Failure to specially swear the jury in a capital case held a non-jurisdictional defect to be taken advantage of before verdict, and not to be first made in motion for new trial. Hill v. State, 112 Miss. 375, 73 So. 66, 1916 Miss. LEXIS 121 (Miss. 1916).

If a juror, in his voir dire, discloses facts disqualifying himself, a defendant declining to object to him for cause cannot, after verdict, complain of his disqualification, nor make the point in the supreme court. West v. State, 80 Miss. 710, 32 So. 298, 1902 Miss. LEXIS 313 (Miss. 1902).

The objection that the jury was not sworn cannot be first raised in the supreme court in a criminal case. Alexander v. State, 22 So. 871 (Miss. 1898).

8. —Presence of accused.

The trial court in a capital murder prosecution did not err in permitting 3 off-the-record bench conferences and a jury instruction conference to be conducted when the defendant was not present where the defendant was represented by counsel at every critical stage of the proceedings, and he was not prejudiced by his absences at the conferences. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

Where the record does not affirmatively show that the defendant was in court at the time the jury's verdict was returned or when the judgment and sentence was pronounced against him, the defendant was not entitled to a reversal where he made no ground of special exception in the trial court in this respect. Jones v. State, 227 Miss. 518, 86 So. 2d 348, 1956 Miss. LEXIS 721 (Miss. 1956).

Conviction not reversed because record does not show accused was present when jury was impaneled. Schwartz v. State, 103 Miss. 711, 60 So. 732, 1912 Miss. LEXIS 220 (Miss. 1912).

9. —Pronouncement of sentence.

The defendant was not entitled to reversal of his conviction on the basis that his sentence was not announced in open court where he failed to point out this perceived procedural defect at the trial level. Beckum v. State, 2000 Miss. App. LEXIS 568 (Miss. Ct. App. Dec. 5, 2000), rev'd, 786 So. 2d 1060, 2001 Miss. LEXIS 155 (Miss. 2001).

The language in § 99-37-3(3) infers that a defendant must object to the imposition of restitution at the time of sentencing. Thus, the imposition of restitution was not reversed even though the judge erred in using facts not in evidence to determine the amount of restitution where the defendant failed to object to the restitution at the time of sentencing. Powell v. State, 536 So. 2d 13, 1988 Miss. LEXIS 587 (Miss. 1988).

Where the record does not affirmatively show that the defendant was in court at the time the jury's verdict was returned or when the judgment and sentence was pronounced against him, the defendant was not entitled to a reversal where he made no ground of special exception in the trial court in this respect. Jones v. State, 227 Miss. 518, 86 So. 2d 348, 1956 Miss. LEXIS 721 (Miss. 1956).

Failure of judgment of conviction for rape to recite that the defendant was placed at the bar for sentence does not constitute reversible error on appeal, since such failure was not complained of in the trial court. Buchanan v. State, 225 Miss. 399, 83 So. 2d 627, 1955 Miss. LEXIS 597 (Miss. 1955).

Judgment of conviction in a murder prosecution was not void where the alleged error of failing to have the judgment recite that the defendant was placed at the bar, and asked the question whether he had anything to say as to why judgment and sentence of the court should not be pronounced against him, was not made grounds of special exception in the court below, and was not set up as ground for a new trial. Holloway v. State, 187 Miss. 238, 192 So. 450, 1939 Miss. LEXIS 107 (Miss. 1939).

10. —Venue.

On an appeal from a conviction in a justice of peace court for the unlawful possession of intoxicating liquor, or other misdemeanors, the state must prove in what district of the county the offense occurred; and the question of whether or not venue was proved may be raised for the first time in the supreme court. Jones v. State, 230 Miss. 887, 94 So. 2d 234, 1957 Miss. LEXIS 436 (Miss. 1957), overruled, Mattox v. State, 243 Miss. 402, 137 So. 2d 920, 1962 Miss. LEXIS 356 (Miss. 1962).

A conviction for petit larceny could not be sustained on appeal under this section [Code 1942, § 1987] where the record was silent when the case was submitted to the jury as to whether the alleged offense was committed within the district of the justice of the peace court from which the case was appealed. Johnson v. State, 186 Miss. 544, 191 So. 115, 1939 Miss. LEXIS 233 (Miss. 1939).

Venue is jurisdictional and may be assigned as error on appeal without exception. Quillen v. State, 10 Miss. 2735a, 106 Miss. 831, 64 So. 736, 1914 Miss. LEXIS 24 (Miss. 1914); Horton v. State, 123 Miss. 525, 86 So. 338, 1920 Miss. LEXIS 51 (Miss. 1920).

Venue in criminal case is jurisdictional and failure to prove crime committed in district of justice trying case may be reviewed although question not raised below. Monroe v. State, 103 Miss. 759, 60 So. 773, 1912 Miss. LEXIS 228 (Miss. 1912).

Failure of state to prove venue in criminal case is jurisdictional and may be reviewed although not raised in lower court. Allen v. State, 98 Miss. 192, 53 So. 498, 1910 Miss. LEXIS 51 (Miss. 1910); Cawthon v. State, 100 Miss. 834, 57 So. 224, 1911 Miss. LEXIS 82 (Miss. 1911); Kyle v. Calhoun City, 123 Miss. 542, 86 So. 340, 1920 Miss. LEXIS 55 (Miss. 1920); Griffin v. State, 140 Miss. 175, 105 So. 457, 1925 Miss. LEXIS 247 (Miss. 1925); Brasham v. State, 140 Miss. 712, 106 So. 280, 1925 Miss. LEXIS 306 (Miss. 1925); Dorsey v. State, 141 Miss. 600, 106 So. 827, 1926 Miss. LEXIS 464 (Miss. 1926); Evans v. State, 144 Miss. 1, 108 So. 725, 1926 Miss. LEXIS 334 (Miss. 1926); Norris v. State, 143 Miss. 365, 108 So. 809, 1926 Miss. LEXIS 273 (Miss. 1926); Kitchens v. State, 186 Miss. 443, 191 So. 116, 1939 Miss. LEXIS 234 (Miss. 1939); Johnson v. State, 186 Miss. 544, 191 So. 115, 1939 Miss. LEXIS 233 (Miss. 1939).

11. —Jurisdiction of trial court.

Upon an appeal from a conviction of unlawful possession of intoxicating liquor, the contention, made for the first time in the supreme court, that the circuit court had no jurisdiction on an appeal from a justice of the peace court, because there was no certified copy of the proceedings had in the justice of the peace court could not avail defendant whose only objection made to the transcript at the time of the trial was that it was not under seal by the justice of the peace. Jones v. State, 230 Miss. 887, 94 So. 2d 234, 1957 Miss. LEXIS 436 (Miss. 1957), overruled, Mattox v. State, 243 Miss. 402, 137 So. 2d 920, 1962 Miss. LEXIS 356 (Miss. 1962).

The mere fact that the transcript of a record on appeal from the police court to the circuit court recited that it was certified by two named city officials whereas in fact it was certified by two other city officials did not divest the circuit court of jurisdiction over the offense of keeping open a grocery store on the Sabbath day. Walton v. Tupelo, 229 Miss. 193, 90 So. 2d 193, 1956 Miss. LEXIS 600 (Miss. 1956).

Jurisdiction of trial court may be questioned for first time on appeal. Rodgers v. Hattiesburg, 99 Miss. 639, 55 So. 481, 1911 Miss. LEXIS 234 (Miss. 1911); Brasham v. State, 140 Miss. 712, 106 So. 280, 1925 Miss. LEXIS 306 (Miss. 1925).

12. —Matters of pleading.

In prosecution for grand larceny where the defendant pleaded not guilty, and where the indictment alleged stolen property to be personalty of Hattiesburg Hardware Stores, instead of that of a Mississippi corporation of like name, the indictment was not fatal where the accused made no request for directed verdict and made no suggestion of variance between the indictment and proof, and did not file a demurrer to the indictment. Wiggins v. State, 215 Miss. 441, 61 So. 2d 145, 1952 Miss. LEXIS 583 (Miss. 1952).

Claim of variance not made ground for special exception below cannot be made on appeal. Thomas v. State, 103 Miss. 800, 60 So. 781, 1912 Miss. LEXIS 232 (Miss. 1912).

13. Evidence; generally.

Although neither the fact of the taking of a polygraph examination nor the results of such an examination are admissible into evidence, the mistaken inclusion of a polygraph consent form in the materials that went to the jury room during the jury deliberation did not constitute reversible error where no one could state when the consent form was placed in the evidence envelope, its presence in the evidence envelope did not show that it was viewed by the jury, testimony from 3 jurors did not evidence any certainty of what exhibits when to the jury room, although there was testimony evidencing the juror's knowledge of the defendant's willingness to take the polygraph test, their testimony evidenced only a brief mention of the fact in jury deliberation and not prolonged discussion, and the record did not evidence that there was any overreaching influence on their verdict that worked any prejudice to the defendant. Garrett v. State, 549 So. 2d 1325, 1989 Miss. LEXIS 438 (Miss. 1989).

A case cannot be reversed by the supreme court on the ground that the evidence did not show corporate existence where no objection was made on that ground in the court below. James v. State, 77 Miss. 370, 26 So. 929, 1899 Miss. LEXIS 59 (Miss. 1899).

14. —Admission and exclusion.

Any error in admission of testimony of prison guard that defendant confessed to killing victim was harmless in murder prosecution, though such evidence was not timely disclosed to defense, where testimony was cumulative to similar testimony by numerous other witnesses. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Decision whether to admit testimony of witness whose name was not timely disclosed to defense rests largely within discretion of trial court. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Admission of testimony of agent of Federal Bureau of Investigation (FBI) that FBI informant, who was member of Ku Klux Klan, informed him of incriminating statement made by defendant at Klan meeting was not prejudicial error in murder prosecution, though agent's name was not provided to defense until first day of trial; prosecution was not aware before trial that agent was recipient of information about incriminating statement, trial court called recess to allow defense counsel opportunity to question agent, and agent was called to corroborate testimony of one of several witnesses who had knowledge of inculpatory statements made by defendant. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Admission of testimony of witness regarding racial and derogatory comments defendant made when referring to murder victim, which comments were not included in witness's prior recorded statement, was not prejudicial error in murder prosecution, even if prosecution had knowledge of comments and failed to supplement discovery, where defense counsel cross-examined witness regarding absence of derogatory comments from her recorded statement. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Letters written by defendant to relatives and page from manuscript of book about defendant's life, which expressed defendant's hostile views toward blacks and civil rights leaders and proclaimed his involvement in the Ku Klux Klan, were relevant to establish defendant's motive for killing black leader of civil rights organization, and more probative on such issue than prejudicial, especially as there was no evidence that defendant had ever met victim. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Error in failure to apply proper legal standards in excluding evidence of prior kissing between parties in rape case was harmless; other evidence included that parties were previously acquainted, that defendant was high or intoxicated night of incident, that during sexual encounter victim was injured, that victim ran away from scene in distraught, frantic manner in state of undress, that parties were kissing and fondling on night of incident, and defense failed to demonstrate significance and nature of previous kissing between parties that had been excluded. Peterson v. State, 671 So. 2d 647, 1996 Miss. LEXIS 54 (Miss. 1996).

The supreme court, even in a murder case, will not consider an assignment of error predicated upon the admission of evidence if no objection was made to it in the court below. Mathis v. State, 80 Miss. 491, 32 So. 6, 1902 Miss. LEXIS 288 (Miss. 1902).

15. —Weight and sufficiency.

Function of jury is to pass upon weight and worth of evidence, and credibility and veracity of witnesses, and supreme court cannot set aside verdict of guilty unless it is clear that such verdict is result of prejudice, bias, or fraud or is manifestly against the weight of the credible evidence. Ivey v. State, 206 Miss. 734, 40 So. 2d 609, 1949 Miss. LEXIS 297 (Miss. 1949).

Failure of proof may not be raised for the first time on appeal. Horn v. State, 165 Miss. 169, 147 So. 310, 1933 Miss. LEXIS 293 (Miss. 1933).

The statute does not operate in any case to supply proof that an offense has been committed, where the defendant moves for a new trial because the verdict was contrary to the law and evidence. Bryant v. State, 65 Miss. 435, 4 So. 343, 1888 Miss. LEXIS 12 (Miss. 1888).

16. —Improper remarks and argument of counsel.

Prosecutor's comment to juror during individual voir dire in chambers that defendant did not have to testify did not amount to improper comment on defendant's failure to testify in murder prosecution, where comment was made in response to juror's clear misunderstanding of the law regarding presumption of innocence which she expressed in response to questioning by defense counsel. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Even if prosecutor's comment during closing argument that defendant did not deny ownership of alleged murder weapon was improper comment on defendant's failure to testify, such error was harmless in murder prosecution; evidence of defendant's guilt was overwhelming, including evidence that defendant's rifle was found at scene of murder with his fingerprint on the scope, and court instructed jury on defendant's right not to testify. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Prosecutor's comment during closing argument, in reference to defense counsel's cross-examination of state witness on her history of family problems, that defense counsel would do anything to get a murderer loose did not amount to prejudicial error in murder prosecution, in light of overwhelming evidence of defendant's guilt. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Fact that prosecution referred to several exhibits as "appellate" exhibits did not amount to reversible error in murder prosecution, despite defendant's contention that such references impressed upon jurors that they were not final judges and their decision was reviewable by another court; defense failed to timely state its objection and request corrective action, and trial judge corrected any error by instructing prosecution to use term "Court's exhibits." De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Prosecutor's closing argument that defendant's accomplices were not being tried because they had been exonerated in prior judicial hearing was proper response to defense counsel's references to the fact that no action was being taken against defendant's accomplices. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutor's closing argument during guilt phase that "This man deserves everything that he can get for the most brutal murder" and "He's guilty" were not personal opinion comments, as prosecutor never said that she believed that defendant was guilty or that she believed that defendant deserved the death penalty. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutors are afforded the right to argue anything in the State's closing argument that was presented as evidence, but arguing statements of fact which are not in evidence or necessarily inferable from it and which are prejudicial to the defendant is error. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecuting attorney should refrain from commenting upon appearance of defendant when he has not been introduced as a witness. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecuting attorney should refrain from doing anything or saying anything that would tend to cause jury to disfavor defendant due to matters other than evidence relative to the crime. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutor's comment on defendant's demeanor and appearance may have highlighted his failure to testify, which is plainly prohibited, and the remark should not have been made. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Any error in prosecutor's comment on defendant's demeanor, which might have been taken as a comment on failure to testify, was cured by instructions to jurors to disregard remarks of counsel which have no basis in the evidence and to not draw any unfavorable inference against defendant because of his failure to testify. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutor did not comment on defendant's failure to testify by stating, during closing argument in prosecution against defendant for arson, that it was not likely that government witness fabricated his testimony, in that if he had, he would have fabricated a better story; rather, comment merely referred to paucity of evidence supporting defense theory witness was publicity seeker who would fabricate testimony. Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

Prosecutor did not comment on defendant's failure to testify by stating, during closing argument in prosecution against defendant for arson, that there was no testimony supporting defense theory that defendant could not have committed the crime inasmuch as he was doctor who derived sense of closeness from the community because he was "their" doctor; rather, comment merely referred to paucity of evidence supporting that defense theory. Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

Prosecutor did not comment on defendant's failure to testify by stating, during closing argument in prosecution against defendant for arson, that there was no testimony supporting defense theory that arsonist was blackmailing defendant; rather, comment merely referred to fact that blackmail theory was put forth by defense attorneys rather than by defense witnesses. Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

Capital murder defendant was not prejudiced by prosecutor's statement that the only "correct choice" upon conviction was death penalty; trial court instructed that jury must decide whether defendant should be sentenced to death or to life imprisonment, leaving no question that jurors were fully informed of their options, and jurors were presumed to follow law as instructed. Walker v. State, 671 So. 2d 581, 1995 Miss. LEXIS 494 (Miss. 1995), cert. denied, 519 U.S. 1011, 117 S. Ct. 518, 136 L. Ed. 2d 406, 1996 U.S. LEXIS 7236 (U.S. 1996).

Capital murder defendant was not prejudiced by comment of prosecution, during guilt phase closing argument, inviting jury to notice that on each of several situations in which state was prepared to go forward with proof "that the defense would just as soon not be before you," a stipulation was entered into; immediately thereafter the court instructed prosecutor "don't raise a comment on why the stipulations were made," and defense counsel did not request any further action. Walker v. State, 671 So. 2d 581, 1995 Miss. LEXIS 494 (Miss. 1995), cert. denied, 519 U.S. 1011, 117 S. Ct. 518, 136 L. Ed. 2d 406, 1996 U.S. LEXIS 7236 (U.S. 1996).

In the penalty phase of a capital murder prosecution, the prosecutor's comment that "we have never heard one single witness say he ever felt sorry for what he did" was not impermissible, as it was simply an argument that none of the defendant's mitigation witnesses indicated that the defendant was sorry for killing the victim, and was not an argument for "lack of remorse" as an aggravating factor. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

A prosecutor's remarks during the penalty phase of a capital murder prosecution did not constitute an improper comment on the defendant's failure to testify where the prosecutor stated that the defendant "showed no compassion, but would send a lawyer up here and ask you for compassion," since the argument pointed out the lack of a mitigation defense presented by the defendant, and that he was reduced to sending his lawyer in to plead for his life after all else had failed. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

The prosecutor's closing argument in the guilt phase of a capital murder prosecution did not constitute an improper comment on the defendant's right to remain silent following arrest where the prosecutor, while discussing a county jail inmate's testimony as to statements made by the defendant while he was in the jail, referred to the relationship between the defendant and the witness, and described the circumstances under which the statements were made. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

A prosecutor's closing argument in a capital murder case did not constitute a comment on the defendant's failure to testify at trial, in spite of the defendant's argument that the prosecutor's comments highlighted the fact that the only people alive who could have testified as to the events surrounding the murders were the defendant and his accomplice, where the prosecutor merely stated that the defendant and his accomplice saw to it that there were no eyewitnesses, and that "people who kill their victims and kill their eyewitnesses cannot be set free." Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

A prosecutor's biblical references during closing argument at the sentencing phase of a capital murder prosecution did not deprive the defendant of a fair trial, as the comments were within the "broad latitude" afforded counsel in closing argument. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

In the sentencing phase of a capital murder prosecution, the State's closing argument did not constitute a comment on the defendant's failure to take the witness stand in his own defense where the State made the following argument: "Do you think she was suffering? Do you think that's cruel and atrocious, and what's even more than that, what do you think was running through [defendant's] head as he sat through watching her gag on her own blood? What do you think he was thinking?" Thorson v. State, 653 So. 2d 876, 1994 Miss. LEXIS 600 (Miss. 1994).

A prosecutor's remarks during closing argument did not constitute improper comment on the defendant's decision not to testify where the prosecutor did not comment on the defendant's failure to take the stand, but merely attempted to turn the jury's attention to the defendant's confession to the police which had been admitted into evidence. Foster v. State, 639 So. 2d 1263, 1994 Miss. LEXIS 670 (Miss. 1994), cert. denied, 514 U.S. 1019, 115 S. Ct. 1365, 131 L. Ed. 2d 221, 1995 U.S. LEXIS 2061 (U.S. 1995).

In a capital murder trial, the phrase "they haven't shown it" used by the prosecutor in his closing argument with respect to the defendant's alibi defense did not shift the burden of proof from the State to the defendant and deprive him of his right to a presumption of innocence where the prosecutor stated that the alibi instruction required the defendant to be in a place so remote and distant that he could not have committed the offense and "they haven't shown it"; the prosecutor did not tell the jury that the defendant's failure to establish his alibi should automatically translate into a verdict of guilty, but merely stated that the defense had not proven or "shown" that the defendant was "in a place so remote and distant that he could not have committed the offense" at the time when the crime occurred. Conner v. State, 632 So. 2d 1239, 1993 Miss. LEXIS 541 (Miss. 1993), cert. denied, 513 U.S. 927, 115 S. Ct. 314, 130 L. Ed. 2d 276, 1994 U.S. LEXIS 7088 (U.S. 1994), overruled, Weatherspoon v. State, 732 So. 2d 158, 1999 Miss. LEXIS 4 (Miss. 1999).

In the sentencing phase of a capital murder prosecution, the prosecutor's comments during closing argument portraying the victim as a "grandmother" who left home "wearing her mother's day present ring on her finger," and asking the jury not to forget the victim "because she deserves justice" did not constitute an impermissible argument to sentence the defendant to death out of vengeance and sympathy for the victim; the introduction of evidence concerning the background and character of the victim and the impact of the crime on the victim's family is not prohibited, as such evidence may be relevant to the jury's decision as to whether the death penalty should be imposed. Conner v. State, 632 So. 2d 1239 (Miss. 1993), cert. denied, 513 U.S. 927, 115 S. Ct. 314, 130 L. Ed. 2d 276 (1994), post-conviction relief denied, 684 So. 2d 608 (Miss. 1996), reh'g denied (Miss. 1996).

A prosecutor did not improperly comment during closing argument on the defendant's right to remain silent where the prosecutor remarked that the victim could not talk because she was dead and stated that only the defendant and God knew what happened, but he did not observe the defendant's silence during trial; the prosecutor's comments would be a reference to the defendant's failure to testify only if innuendo and insinuation were employed. Alexander v. State, 610 So. 2d 320, 1992 Miss. LEXIS 580 (Miss. 1992).

A prosecutor improperly commented during closing argument on a capital murder defendant's failure to testify where the prosecutor stated that the defendant "hasn't told you the whole truth yet," that "you still don't know the whole story," and that the defendant was the only person alive who could give the whole story. Butler v. State, 608 So. 2d 314, 1992 Miss. LEXIS 588 (Miss. 1992).

A prosecutor did not improperly comment on the defendant's failure to testify when he stated during closing argument: "That's what you have got before you, and that's all you have got before you. All the evidence in this case points to one thing and one thing only"; the prosecutor's comment related to the evidence presented in the trial by both the State and defense as a whole, rather than the failure of the defendant to take the stand. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In a capital murder prosecution, the prosecutor's statement that there had not been any testimony that the defendant acted in self-defense did not constitute an impermissible comment upon the failure of the defendant to testify, where the prosecutor's statement was made in connection with his argument that the State had proved the required element that the defendant's actions were not done in necessary self-defense. Ladner v. State, 584 So. 2d 743, 1991 Miss. LEXIS 434 (Miss.), cert. denied, 502 U.S. 1015, 112 S. Ct. 663, 116 L. Ed. 2d 754, 1991 U.S. LEXIS 7261 (U.S. 1991).

It was improper for a prosecutor to comment on a burglary defendant's failure to call a witness who was allegedly with the defendant at the time the crime was committed, where there was no suggestion that the witness was not equally available to the State, the witness was not identified as a person under the control of the defendant, and he was not a close relative who would ordinarily be expected to be put in an unacceptable compromising position should he be called to testify as to the validity of the defendant's alibi. Burke v. State, 576 So. 2d 1239, 1991 Miss. LEXIS 54 (Miss. 1991).

Comments made by a prosecutor during his closing argument in a capital murder prosecution did not constitute prosecutorial misconduct, where the prosecutor stated that the victim was a human being and had a right to be protected by the law even though he may not have been wealthy or prominent or a leader in his community, in spite of the defendant's argument that the "value" of the victim's life should not be a factor in considering whether the defendant should live or die and that such a consideration introduces an arbitrary factor into the process, since the prosecutor's statement was innocuous. Mackbee v. State, 575 So. 2d 16, 1990 Miss. LEXIS 831 (Miss. 1990).

In a murder prosecution, the prosecutor's comment during closing argument that the defendant was "clothed in the full protection of the Constitution of the United States and he has got what [the victim] never got. And that is a jury of 12 good people to decide his fate," did not warrant reversal of the jury's verdict where the comment was an isolated statement and no other portion of the closing argument focused on the exercise of constitutional rights by the defendant. Shell v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

In a prosecution for aggravated assault and shooting into a dwelling house, comments made by the district attorney to the effect that no one knew whether the defendant contended that he was not guilty because he didn't shoot the gun into the house or because he did shoot the gun into the house but could not appreciate the wrongfulness of that act, were comments on the defense presented, or lack thereof, rather than comments on the defendant's failure to testify and, therefore, were not improper. Shook v. State, 552 So. 2d 841, 1989 Miss. LEXIS 449 (Miss. 1989).

A prosecutor's remarks during closing argument referring to an expert as a "whore," stating that the expert was paid $2,000, and that the expert resided outside the state should not have been made but did not constitute reversible error. Dunaway v. State, 551 So. 2d 162, 1989 Miss. LEXIS 371 (Miss. 1989).

The prohibition against "golden rule" arguments, which ask the jurors to put themselves in the place of one of the parties, extends to criminal cases. Chisolm v. State, 529 So. 2d 635, 1988 Miss. LEXIS 348 (Miss. 1988).

A prosecutor's improper remarks during closing argument regarding race did not warrant a reversal of conviction where the jury did not return a life sentence against the defendant as requested by the prosecutor and where there was overwhelming evidence of the defendant's guilt of the crime charged. Herring v. State, 522 So. 2d 745, 1988 Miss. LEXIS 72 (Miss. 1988).

The failure to obtain rulings from the trial court on objections to alleged improper argument of counsel waived the objections. Cole v. State, 525 So. 2d 365, 1987 Miss. LEXIS 2655 (Miss. 1987), cert. denied, 488 U.S. 934, 109 S. Ct. 330, 102 L. Ed. 2d 348, 1988 U.S. LEXIS 4775 (U.S. 1988).

Permitting district attorney in his closing argument to refer to defendant in prosecution for murder as a "black gorilla," is reversible error. Harris v. State, 209 Miss. 141, 46 So. 2d 91, 1950 Miss. LEXIS 372 (Miss. 1950).

Conviction will not be disturbed for improper argument unless bill of exceptions taken at time shows remarks prejudicial. McLeod v. State, 130 Miss. 83, 92 So. 828, 1922 Miss. LEXIS 199 (Miss. 1922).

17. Matters pertaining to record.

The many cases cited under Code 1972, § 11-51-87 holding that the supreme court acquired no jurisdiction in cases where a copy of the judgment of the justice of the peace was not included in the record on appeal are overruled because of two statutes – Code 1972, § 11-3-35 and this section – which were apparently overlooked by the early cases. Avera v. State, 300 So. 2d 787, 1974 Miss. LEXIS 1636 (Miss. 1974).

Although under the statutes it is still mandatory that the justice of the peace, or the mayor or police justice, in appeals from their courts, shall transmit to the proper clerk a certified copy of the record of the proceedings with the original papers, process and appeal bond, yet, if no objection is made to the transcript before or during the trial of the case on its merits, it will be conclusively presumed that the transcript was before the court and complied in every respect with the law. Whittington v. State, 218 Miss. 631, 67 So. 2d 515, 1953 Miss. LEXIS 581 (Miss. 1953).

While it is true that on appeals to the circuit courts from the justice of the peace courts in both civil and criminal cases, it is necessary that a certified transcript of the record of the proceedings in the justice courts be filed in the circuit court in order to confer on the circuit court jurisdiction to try the appeal on its merits, it is not necessary to produce in evidence on the trial such transcript or any essential part thereof in order to confer jurisdiction on the circuit court to try the case upon its merits. Lee v. State, 190 Miss. 877, 1 So. 2d 492, 2 So. 2d 148, 1941 Miss. LEXIS 85 (Miss. 1941).

Justice court record which included copy of affidavit, warrant for arrest, appearance bond, and judgment, with justice's certificate that such was a true and correct copy, held sufficient to give circuit court jurisdiction of appeal. Stewart v. State, 179 Miss. 31, 174 So. 579, 1937 Miss. LEXIS 22 (Miss. 1937).

Where record did not contain judgment of justice court, appeal bond, or transcript of proceedings in justice court, but such transcript was unnecessary for understanding of proceedings in circuit court, statute prevents reversal. McCluney v. State, 162 Miss. 333, 138 So. 356, 1931 Miss. LEXIS 118 (Miss. 1931).

Statute required presumption that proper appeal bond was executed by one appealing from justice court requiring his attendance at court until appeal was disposed of. McCluney v. State, 162 Miss. 333, 138 So. 356, 1931 Miss. LEXIS 118 (Miss. 1931).

Without judgment of circuit court showing establishment, it is presumed certification of record was not established in circuit court on appeal from justice. Brasham v. State, 140 Miss. 712, 106 So. 280, 1925 Miss. LEXIS 306 (Miss. 1925).

Assignments without basis in record will not be considered. Higgins v. State, 120 Miss. 823, 83 So. 245, 1919 Miss. LEXIS 134 (Miss. 1919).

18. Other acts or crimes.

Admission of testimony of prison guard that while defendant was incarcerated for another offense, he confessed to murder of black civil rights leader was not reversible error in prosecution for such murder, despite fact that conviction for which defendant was incarcerated was subsequently vacated as unconstitutional; guard made no reference to details of crime for which defendant was incarcerated, and previous offense was not similar or identical to charged crime. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Even if state witness's general reference to bombings, in response to question on direct examination regarding defendant's statements about murder of black leader of civil rights organization, was improper evidence of other crimes, such testimony was not prejudicial in prosecution for such murder; answer was unresponsive, and prosecutor thereafter directed witness's testimony towards matters involving murder victim. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

RESEARCH REFERENCES

ALR.

Communication between court officials or attendants and jurors in criminal trial as ground for mistrial or reversal-post–Parker cases. 35 A.L.R.4th 890.

Juror's reading of newspaper account of trial in state criminal case during its progress as ground for mistrial, new trial, or reversal. 46 A.L.R.4th 11.

Gestures, facial expressions, or other nonverbal communication of trial judge in criminal case as ground for relief. 45 A.L.R.5th 531.

What constitutes harmless or plain error under Rule 52 of the Federal Rules of Criminal Procedure – Supreme Court cases. 157 A.L.R. Fed. 521.

Am. Jur.

5 Am. Jur. 2d, Appellate Review §§ 654, 699 et seq.

Lawyers' Edition.

Supreme Court Cases determining whether admission of evidence at criminal trial in violation of federal constitutional rule is prejudicial error or harmless error. 31 L. Ed. 2d 921.

§ 99-35-145. Repealed.

Repealed by Laws, 1984, ch. 378, § 18, eff from and after April 17, 1984.
§ 99-35-145. [Codes, 1942, § 1992.5; Laws, 1952, ch. 250, §§ 1-10]

Editor's Notes — Former § 99-35-145 was entitled: Coram nobis after affirmance of conviction; appeal from grant or denial of writ.

Mississippi Uniform Post-Conviction Collateral Relief Act, En Laws, 1984, ch. 378, eff from and after April 17, 1984, codified at §§ 99-39-1 et seq., repealed statutory writ of error coram nobis and abolished common law writs relating to post-conviction collateral relief.

CHAPTER 36.

VICTIM ASSISTANCE COORDINATOR

Sec.

99-36-1. Purpose.

99-36-3. Definitions.

99-36-5. Rights of victim, guardian of victim, or close relative of deceased victim within criminal justice system.

99-36-7. Victim assistance coordinator; duties; salary; county victim assistance coordinator; duties; multi-county coordinator; participation by municipalities; federal grants.

§ 99-36-1. Purpose.

The purpose of this chapter is to ensure the fair and compassionate treatment of victims and witnesses of crime and to increase the effectiveness of the criminal justice system by affording certain basic rights and considerations to the victims and witnesses of crime who are essential to prosecution.

HISTORY: Laws, 1987, ch. 467, § 1; reenacted without change, Laws, 1990, ch 486, § 1; reenacted, Laws, 1993, ch. 331, § 1, eff from and after passage (approved March 12, 1993).

Editor's Notes — Laws of 1990, ch. 486, § 5, provided for the repeal of this chapter from and after September 1, 1993. Subsequently, Laws of 1993, ch. 331, § 5, amended Laws of 1990, ch. 486, § 5, to delete the repeal provision.

§ 99-36-3. Definitions.

The following terms shall have the meanings ascribed herein, unless the context dictates otherwise:

(a) "Victim" means any person against whom a felony has been committed or attempted;

(b) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister or child of the deceased victim; and

(c) "Guardian of a victim" means a person who is the legal guardian of the victim, where the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.

HISTORY: Laws, 1987, ch. 467, § 2; reenacted without change, Laws, 1990, ch 486, § 2; reenacted, Laws, 1993, ch. 331, § 2, eff from and after passage (approved March 12, 1993).

§ 99-36-5. Rights of victim, guardian of victim, or close relative of deceased victim within criminal justice system.

(1) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(a) The right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts, including, but not limited to, the filing of criminal charges where the perpetrator is known;

(b) The right to have a circuit or county court judge take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(c) The right to be informed of relevant court proceedings and to be informed if those court proceedings have been canceled or rescheduled prior to the event;

(d) The right to be informed, when requested, by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements;

(e) The right to provide a victim impact statement prior to any sentencing of the offender; and

(f) The right to receive information regarding compensation to victims of crime as may be provided by law.

(2) A victim, guardian of a victim or close relative of a deceased victim has the right to be present at all public court proceedings related to the prosecution of the accused, consistent with the rules of evidence.

(3) A judge, attorney for the state, peace officer or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this chapter. The failure or inability of any person to provide a right or service enumerated in this chapter may not be used by a defendant in a criminal case as a ground for appeal. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

HISTORY: Laws, 1987, ch. 467, § 3; reenacted and amended, Laws, 1990, ch 486, § 3; reenacted, Laws, 1993, ch. 331, § 3, eff from and after passage (approved March 12, 1993).

Cross References — Victim's right to provide victim impact statement for use by court in sentencing a criminal defendant, see §§ 99-19-151 through 99-19-161.

Duty of victim assistance coordinator to ensure that parties are afforded the rights granted by this section, see § 99-36-7.

Restitution to victims of crime, see §§ 99-37-1 et seq.

RESEARCH REFERENCES

ALR.

Emotional manifestations by victim or family of victim during criminal trial as grounds for reversal, new trial, or mistrial. 31 A.L.R.4th 229.

Governmental tort liability for failure to provide police protection to specifically threatened crime victim. 46 A.L.R.4th 948.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

§ 99-36-7. Victim assistance coordinator; duties; salary; county victim assistance coordinator; duties; multi-county coordinator; participation by municipalities; federal grants.

(1)(a) In addition to the full-time legal assistants to the district attorney authorized by Section 25-31-5, the district attorney in each circuit court district in this state shall, subject to the approval of and upon the order of the senior circuit court judge of the district, employ one (1) person to serve at the will and pleasure of the district attorney as a "victim assistance coordinator" who shall not be considered to be a state employee.

(b) The District Attorney of the First Circuit Court District may appoint one (1) additional victim assistance coordinator, and the District Attorney of the Fourteenth Circuit Court District, upon the approval of the boards of supervisors, may appoint one (1) additional victim assistance coordinator, subject to the approval of and upon the order of the senior circuit court judge of the applicable district for a total of two (2) victim assistance coordinators per district.

(2) The duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians and relatives by Section 99-36-5. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the state and the judiciary in fulfilling that duty.

(3) The salary of the victim assistance coordinator shall not exceed the salary authorized for criminal investigators in Section 25-31-10, and shall be paid jointly by the counties comprising the circuit court district, with each county paying a pro rata share of the salary as determined by the senior circuit court judge.

(4) The board of supervisors of any county, with the approval of and upon the order of the senior circuit court judge of the district wherein such county lies, may, in addition to any victim assistance coordinator provided for in subsection (1) of this section, create the position of county victim assistance coordinator. The duty of the county victim assistance coordinator shall be to cooperate with local law enforcement agencies, the county attorney and the district attorney in assuring that a victim, guardian or close relative is afforded the rights granted by Section 99-36-5. Two (2) or more counties, by action of their respective boards of supervisors, with the approval of and upon the order of the senior circuit court judge of the district wherein such counties lie, may join in establishing and maintaining the position of victim assistance coordinator to serve these counties. Any municipality, by action of its governing authority, may participate in the establishment and maintenance of a county victim assistance coordinator's office located within the municipality.

(5) Any district attorney, county board of supervisors or governing authority of a municipality which has established or is participating in the maintenance of an office of victim assistance coordinator may apply through the

Governor's Office of State and Federal Programs for a grant under the federal "Victims of Crimes Act of 1984" (Public Law 98-473) to be used in the continued operation of the victim assistance program.

HISTORY: Laws, 1987, ch. 467, § 4; reenacted and amended, Laws, 1990, ch. 486, § 4; reenacted, Laws, 1993, ch. 331, § 4; Laws, 1997, ch. 429, § 1; Laws, 2015, ch. 476, § 61, eff from and after passage (approved Apr. 22, 2015).

Cross References — First Circuit Court District composition, see § 9-7-5.

Rights of victim, guardian of victim, or close relative of deceased victim within justice system, see § 99-36-5.

Federal Aspects— Victims of Crime Act of 1984, see 42 USCS §§ 10601 note, 10601-10603.

OPINIONS OF THE ATTORNEY GENERAL

Inherent in the district attorney's authority to hire a victims' assistance coordinator is the authority to set the coordinator's salary, but the pro rata share of such salary to be paid by the counties must be determined by the senior circuit court judge. Mitchell, Feb. 19, 1992, A.G. Op. #92-0027.

It is responsibility of district attorney's office to pay for necessary supplies and equipment required to discharge duties of victim assistance coordinator. Griffith, August 11, 1993, A.G. Op. #93-0453.

CHAPTER 37.

RESTITUTION TO VICTIMS OF CRIMES

Sec.

99-37-1. Definitions.
99-37-3. Imposition and amount of restitution.
99-37-5. Payment; order; enforcement.
99-37-7. Treatment of default in payment as contempt; judicial officer not liable for failure of defendant to pay fine or make restitution.
99-37-9. Term of imprisonment for contempt.
99-37-11. Relief from payment.
99-37-13. Enforcement of judgment.
99-37-15. Resumption of payment upon release from custody.
99-37-17. Civil actions by victims; evidence; damages.
99-37-19. Restitution centers.
99-37-21. Powers and duties of public welfare and corrections departments as to restitution centers.
99-37-23. Restitution in delinquency cases.
99-37-25. Payment by Division of Victim Compensation of costs associated with medical forensic examination and sexual assault evidence collection kit; defendant to make restitution to Division of Victim Compensation.

§ 99-37-1. Definitions.

As used in this chapter:

(a) "Criminal activities" shall mean any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(b) "Pecuniary damages" shall mean all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

(c) "Restitution" shall mean full, partial or nominal payment of pecuniary damages to a victim.

(d) "Victim" shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. "Victim" shall not include any coparticipant in the defendant's criminal activities, or any person knowingly participating in a criminal act at the time he became a victim.

HISTORY: Laws, 1978, ch. 400, § 1; Laws, 1992, ch. 422, § 1, eff from and after passage (approved May 4, 1992).

Cross References — Restitution to owner for malicious injury or death of certain animals, see § 97-41-15.

Community service restitution, see §§ 99-20-1.

Mississippi Crime Victims' Compensation Act, see §§ 99-41-1 et seq.

JUDICIAL DECISIONS

1. In general.

Circuit judge did not err in ordering defendant to pay restitution, under Miss. Code Ann. § 99-37-3, because the evidence underlying defendant's driving under the influence guilty verdict and the evidence of injuries presented at the sentencing hearing provided sufficient proof of a causal connection between defendant's criminal actions and the automobile accident victims' injuries, as the restitution ordered was directly related to damages the victims sustained as a result of the accident which was caused by defendant. Smith v. State, 146 So. 3d 376, 2014 Miss. App. LEXIS 111 (Miss. Ct. App. 2014).

Trial court properly required defendant to pay restitution to a bank which was the victim of forgeries, when the forgery charges were retired to the inactive files because defendant pleaded guilty to a charge of shoplifting. Defendant did not protest the court's finding that defendant admitted to the forgery charges and defendant admitted to agreeing in plea negotiations to make restitution for both the shoplifting and forgery charges. Smith v. State, 130 So. 3d 1187, 2014 Miss. App. LEXIS 45 (Miss. Ct. App. 2014).

In an embezzlement case, restitution was improperly ordered because defendants' customers (the policyholders) did not lose anything that could have been recovered in a civil action. While defendants embezzled their money, the insurance company reinstated each of the victim's insurance policies upon proof of payment to defendants. Salts v. State, 984 So. 2d 1050, 2008 Miss. App. LEXIS 199 (Miss. Ct. App.), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 334 (Miss. 2008).

Grant of restitution to policy holders in an embezzlement case was reversed because funeral home's clients, who were the policy holders, did not lose anything the could be recovered in a civil action; when the money that belonged to the policy owners was embezzled, the insurers reinstated each of the policies. Salts v. State, 2007 Miss. App. LEXIS 513 (Miss. Ct. App. Aug. 7, 2007), op. withdrawn, sub. op., 984 So. 2d 1050, 2008 Miss. App. LEXIS 199 (Miss. Ct. App. 2008).

The payment of restitution is not limited only to the person who has been directly injured by a guilty party; the payment of restitution can also be extended to members of the victim's family who suffer pecuniary damages. Butler v. State, 544 So. 2d 816, 1989 Miss. LEXIS 254 (Miss. 1989).

The ordering of child support to a victim's child is a type of special damages that is encompassed under § 99-37-1. The fixing of child support restitution may by analogy resort to the law regarding setting the amount of child support in divorce cases. Butler v. State, 544 So. 2d 816, 1989 Miss. LEXIS 254 (Miss. 1989).

OPINIONS OF THE ATTORNEY GENERAL

A municipal court judge may order restitution in a criminal case for the full amount of pecuniary damages suffered by a victim. Smallwood, Jan. 23, 2004, A.G. Op. 04-0009.

RESEARCH REFERENCES

ALR.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

Persons or entities entitled to restitution as "victim" under state criminal restitution statute. 92 A.L.R.5th 35.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

1989 Mississippi Supreme Court Review: Statutory Interpretation. 59 Miss. L. J. 876, Winter, 1989.

§ 99-37-3. Imposition and amount of restitution.

(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars ($5,000.00).

(2) In determining whether to order restitution which may be complete, partial or nominal, the court shall take into account:

(a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(b) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall, at the time of sentencing, allow him to be heard on such issue.

(4) If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination.

HISTORY: Laws, 1978, ch. 400, § 2; Laws, 1990, ch. 379, § 1; Laws, 2003, ch. 314, § 1, eff from and after July 1, 2003.

Cross References — Power to punish for contempt, see §§ 9-1-17, 9-11-15.

Power of court to determine conditions of probation, see § 47-7-35.

Restitution to owner of stolen livestock as part of penalty for crime, see § 97-17-53.

Ordering restitution upon one convicted of passing bad checks, see § 97-19-67.

Resumption of payment upon release from custody, see § 99-37-15.

Restitution by one convicted of certain sexual offenses of amount paid for initial medical examination of victim, see § 99-37-25.

Crime Victims' Compensation Fund, see §§ 99-41-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

Circuit judge did not err in ordering defendant to pay restitution, under Miss. Code Ann. § 99-37-3, because the evidence underlying defendant's driving under the influence guilty verdict and the evidence of injuries presented at the sentencing hearing provided sufficient proof of a causal connection between defendant's criminal actions and the automobile accident victims' injuries, as the restitution ordered was directly related to damages the victims sustained as a result of the accident which was caused by defendant. Smith v. State, 146 So. 3d 376, 2014 Miss. App. LEXIS 111 (Miss. Ct. App. 2014).

Trial court properly required defendant to pay restitution to a bank which was the victim of forgeries, when the forgery charges were retired to the inactive files because defendant pleaded guilty to a charge of shoplifting. Defendant stated no objection to paying restitution to the bank, did not protest the court's finding that defendant admitted to the forgery charges, admitted to agreeing in plea negotiations to make restitution for both the shoplifting and forgery charges, and did not show that defendant's due process rights were violated. Smith v. State, 130 So. 3d 1187, 2014 Miss. App. LEXIS 45 (Miss. Ct. App. 2014).

Where defendant was informed in open court by the trial court of the restitution payments imposed as a part of his sentence and responded with a "Yes, sir" when told he had to make the payments, without any objection, he waived any right to raise an objection to the amount of restitution ordered on appeal. Willis v. State, 904 So. 2d 200, 2005 Miss. App. LEXIS 395 (Miss. Ct. App. 2005).

In a homicide prosecution resulting in a conviction for manslaughter, an order of restitution in the amount of $12,828.50 was error where there was no evidence that the trial judge considered the factors set forth in subsection (2) of this section, the trial judge did not specify a time for payment or a method of payment, and there was no express finding that the defendant had assets to pay any part of the amount ordered, though the judge implicitly found that the defendant had assets to pay part of the restitution amount by directing that a lien be placed against the defendant's workers' compensation benefits. Green v. State, 631 So. 2d 167, 1994 Miss. LEXIS 13 (Miss. 1994).

The payment of restitution is not limited only to the person who has been directly injured by a guilty party; the payment of restitution can also be extended to members of the victim's family who suffer pecuniary damages. Butler v. State, 544 So. 2d 816, 1989 Miss. LEXIS 254 (Miss. 1989).

Although the authority to impose restitution flows from the adjudication of guilt or the defendant's plea of guilty, that is not to say that restitution may not be imposed at any stage of the criminal process through informal government-sanctioned compromises and settlements between the offender and the victim so long as detention is not used to induce an agreement. Butler v. State, 544 So. 2d 816, 1989 Miss. LEXIS 254 (Miss. 1989).

Sunsections (3) and (4) of this section indicate the necessity for a hearing before restitution can be assessed. The type of hearing is not specified, but would require at a minimum, (1) notice to the defendant that victim restitution was being considered by the court, (2) the nature of such restitution considered, (3) an opportunity to the defendant to be heard and to object, and (4) a finding by the court to afford adequate appellate review. Butler v. State, 544 So. 2d 816, 1989 Miss. LEXIS 254 (Miss. 1989).

The language in subsection (3) of this section infers that a defendant must object to the imposition of restitution at the time of sentencing. Thus, the imposition of restitution was not reversed even though the judge erred in using facts not in evidence to determine the amount of restitution where the defendant failed to object to the restitution at the time of sentencing. Powell v. State, 536 So. 2d 13, 1988 Miss. LEXIS 587 (Miss. 1988).

A trial court had the authority to authorize an award of fines, court costs, medical expenses and attorney's fees under this section and § 99-37-5. Powell v. State, 536 So. 2d 13, 1988 Miss. LEXIS 587 (Miss. 1988).

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of § 97-3-19, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. Fanning v. State, 497 So. 2d 70, 1986 Miss. LEXIS 2645 (Miss. 1986).

2. Illustrative cases.

Restitution order was improper because the record was silent as to how the trial court arrived at $6,500 for the restitution amount and there was nothing in the record indicated that defendant was provided an opportunity to review and/or object to the restitution required. Turner v. State, 291 So. 3d 376, 2020 Miss. App. LEXIS 21 (Miss. Ct. App. 2020).

Circuit court did not err by ordering defendant to pay restitution because it heard evidence of the stolen items total approximate value, it heard testimony breaking down portion amounts of those items, and at sentencing, the circuit court ordered defendant to pay $5,000, to which she did not object. Burford v. State, — So. 3d —, 2020 Miss. App. LEXIS 484 (Miss. Ct. App. Aug. 25, 2020).

Trial court erred by ordering defendant to pay $1.2 million in restitution because no proof was offered that any more than the $550,000 in pecuniary damages resulted from the embezzlement; the $1.2 million reflected money used for cars, cash, and other expenditures that did not result from the embezzlement of $550,000. Brown v. State, 178 So. 3d 1234, 2015 Miss. LEXIS 558 (Miss. 2015).

Defendant waived any challenge to the order of restitution by failing to object at sentencing. Waiver aside, the issue was meritless, as the trial court hear evidence of the amount of damages caused by defendant's crime and questioned his ability to pay before ordering restitution by paid in monthly installments. Franklin v. State, 170 So. 3d 481, 2015 Miss. LEXIS 364 (Miss. 2015).

Inmate's claim that his sentence was illegal because he was ordered to pay restitution to a victim of an aggravated assault count that was dismissed failed as: (1) the inmate did not object to the imposition of restitution; (2) the term of imprisonment and assessment of court costs were within the parameters of punishment for aggravated assault; (3) a requirement that a defendant pay restitution to a victim was statutorily authorized as part of a criminal sentence under Miss. Code Ann. § 99-37-3(1); (4) the inmate admitted to guilt to the dismissed counts before the dismissal; and (5) the imposition of an illegal sentence, one that violated a fundamental constitutional right, was a prerequisite to trump the procedural bars to entitle the inmate to post-conviction relief. Sims v. State, 134 So. 3d 317, 2013 Miss. App. LEXIS 102 (Miss. Ct. App. 2013), aff'd, 134 So. 3d 300, 2014 Miss. LEXIS 161 (Miss. 2014).

OPINIONS OF THE ATTORNEY GENERAL

This section refers generally to "the court's" power to make restitution, and does not differentiate between types of courts; therefore, municipal court may order restitution in criminal case. Gorrell, Mar. 3, 1993, A.G. Op. #93-0086.

This section limits justice courts to restitution of up to $1,000. Gorrell, Mar. 3, 1993, A.G. Op. #93-0086.

If defendant is charged with misdemeanor involving fraud, found guilty and wishes to make restitution, Justice Court is limited to $1,000.00 restitution, even though amount of fraud is above $1,000.00. Phillips Sept. 9, 1993, A.G. Op. #93-0565.

A video-rental store qualifies for restitution as a victim of a larceny under a lease or rental agreement. Aldridge, March 3, 2000, A.G. Op. #2000-0104.

A municipal court judge may order restitution in a criminal case for the full amount of pecuniary damages suffered by a victim. Smallwood, Jan. 23, 2004, A.G. Op. 04-0009.

RESEARCH REFERENCES

ALR.

Counsel's reference in criminal case to wealth, poverty, or financial status of defendant or victim as ground for mistrial, new trial, or reversal. 36 A.L.R.3d 839.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled

Under State Criminal Statute – Cruelty to, Killing, or Abandonment of, Animals. 45 A.L.R.6th 435.

Am. Jur.

21A Am. Jur. 2d, Criminal Law §§ 874 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 99-37-5. Payment; order; enforcement.

(1) When a defendant is sentenced to pay a fine or costs or ordered to make restitution, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, an order of payment of a fine, costs or restitution shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay all or part of the amounts ordered at the time of sentencing.

(2) When a defendant sentenced to pay a fine or costs or ordered to make restitution is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs or the making of restitution a condition of probation or suspension of sentence. Such offenders shall make restitution payments directly to the victim. As an alternative to a contempt proceeding under Sections 99-37-7 through 99-37-13, the intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant's probation and may be cause for revocation of his probation or suspension of sentence.

HISTORY: Laws, 1978, ch. 400, § 3; Laws, 1979, ch. 462, § 5, eff from and after July 1, 1979.

Cross References — Requiring restitution concomitant with probation, see § 47-7-47.

Imposition of standard state assessment in addition to court imposed fines or other penalties for misdemeanors or felonies, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Joint and several liability of restitution has been consistently upheld as to criminal co-defendants who act in concert, and thus the trial court's order that the inmate pay his co-defendant's part of the restitution if she failed to pay it was not in error; therefore, the order of restitution was affirmed. Craft v. State, 955 So. 2d 384, 2006 Miss. App. LEXIS 813 (Miss. Ct. App. 2006).

In a homicide prosecution resulting in a conviction for manslaughter, an order of restitution in the amount of $12,828.50 was error where there was no evidence that the trial judge considered the factors set forth in § 99-37-3(2), the trial judge did not specify a time for payment or a method of payment, and there was no express finding that the defendant had assets to pay any part of the amount ordered, though the judge implicitly found that the defendant had assets to pay part of the restitution amount by directing that a lien be placed against the defendant's workers' compensation benefits. Green v. State, 631 So. 2d 167, 1994 Miss. LEXIS 13 (Miss. 1994).

A trial judge in a homicide prosecution erred by ordering a claim against the defendant's workers' compensation benefits to secure payment of restitution since § 71-3-43 provides that workers' compensation benefits are exempt from all creditors' claims and from any remedy for recovery of a debt; moreover, under § 99-37-13, imposition of levy of execution for the collection of restitution is not authorized until the defendant is in default in his payment, and the defendant could not have been in default since the order of restitution was not yet enforceable where the defendant was also sentenced to imprisonment and the trial judge did not expressly find that he had assets to pay the amount ordered. Green v. State, 631 So. 2d 167, 1994 Miss. LEXIS 13 (Miss. 1994).

A trial court had the authority to authorize an award of fines, court costs, medical expenses and attorney's fees under § 99-37-3 and this section. Powell v. State, 536 So. 2d 13, 1988 Miss. LEXIS 587 (Miss. 1988).

OPINIONS OF THE ATTORNEY GENERAL

The fact that this section directs restitution payments directly to the victim reflects the Legislature's intention that such payments not be made through the court system. Therefore, the municipal court judge, with the permission of the victim, may, as a condition of suspension of sentence, require a defendant to pay restitution to a third party as trustee for the victim. Miller, April 11, 1995, A.G. Op. #95-0208.

RESEARCH REFERENCES

ALR.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. 73 A.L.R.3d 1240.

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 A.L.R.3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. 79 A.L.R.3d 1025.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments. 22 A.L.R.4th 534.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Am. Jur.

21A Am. Jur. 2d, Criminal Law §§ 859, 874 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December, 1979.

§ 99-37-7. Treatment of default in payment as contempt; judicial officer not liable for failure of defendant to pay fine or make restitution.

(1) Subject to the provisions of Section 99-19-20.1, when a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Subject to the provisions of Section 99-19-20.1, unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) A judicial officer shall not be held criminally or civilly liable for failure of any defendant to pay any fine or to make restitution if the officer exercises his judicial authority in accordance with subsections (1) and (2) of this section to require the payment of such fine or restitution.

(4) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

HISTORY: Laws, 1978, ch. 400, § 4 (1-3); Laws, 1991, ch. 481, § 1, eff from and after July 1, 1991; Laws, 2018, ch. 416, § 3, eff from and after July 1, 2018.

Cross References — Appeals from contempt judgments, see § 11-51-11.

OPINIONS OF THE ATTORNEY GENERAL

Assuming defendant is not indigent, court may make payment of fine and/or court cost condition of probation or suspension of jail sentence, and may issue citation or warrant of arrest for defendant whose court ordered fine is delinquent, for appearance to show cause why default should not be treated as contempt of court; if court determines that default was intentional refusal to obey court order, or defendant did not make good faith effort to make payment, court may find defendant's default constitutes contempt of court and may order defendant committed until fine or specific part thereof is paid. Nash, Sept. 23, 1992, A.G. Op. #92-0736.

Section 99-37-11 can only be used to revoke a fine if the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment pursuant to this section. There is no authority for such fines to be excused simply due to their age or the fact that the defendant left the state. Lipscomb, April 12, 1996, A.G. Op. #96-0197.

This section addresses the issue of a default of payment and states that such a default may be treated as contempt. Creekmore, June 14, 1996, A.G. Op. #96-0377.

A judge, on his own motion, may issue a show cause citation or an arrest warrant for a defendant that has defaulted on the payment of a fine no matter when the fine was imposed; the judge should examine all evidence at his disposal and use judicial discretion in determining whether a warrant should be issued. Thompson, Apr. 27, 2001, A.G. Op. #01-0255.

Subsection (1) of this section and § 19-3-41(4) may be used to collect delinquent payments which consist of constable fees. Busby, July 23, 2004, A.G. Op. 04-0316.

RESEARCH REFERENCES

ALR.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 A.L.R.2d 1059.

Limitations statute applicable to criminal contempt proceedings. 38 A.L.R.2d 1131.

Right of state in criminal contempt case to obtain data from defendant by interrogatories or pretrial discovery as permitted in civil actions. 72 A.L.R.2d 431.

Appealability of acquittal from or dismissal of charge of contempt of court. 24 A.L.R.3d 650.

Appealability of contempt adjudication or conviction. 33 A.L.R.3d 448.

Contempt adjudication or conviction as subject to review, other than by appeal or writ of error. 33 A.L.R.3d 589.

Right to counsel in contempt proceedings. 52 A.L.R.3d 1002.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

Am. Jur.

17 Am. Jur. 2d, Contempt, §§ 43, 45, 58, 59, 147, 148, 150, 160, 187, 205.

7 Am. Jur. Pl & Pr Forms (Rev), Contempt, Form 51 (affidavit of contempt for disobedience of court order); Forms 101, 110 (show cause order for disobedience of court order); Forms 151, 153 (judgment or order of contempt); Form 232 (counteraffidavit alleging inability to comply with judgment or order); Form 261 (certiorari to review judgment of contempt).

CJS.

17 C.J.S., Contempt § 34.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 99-37-9. Term of imprisonment for contempt.

The term of imprisonment for contempt for failure to make restitution shall be set forth in the commitment order, and shall not exceed one (1) day for each twenty-five dollars ($25.00) of the restitution, or thirty (30) days if the order of the restitution was imposed upon conviction of a violation or misdemeanor, or one (1) year in any other case, whichever is the shorter period. A person committed for failure to make restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

HISTORY: Laws, 1978, ch. 400, § 4(4); Laws, 1979, ch. 501, § 3, eff from and after passage (approved April 18, 1979).

RESEARCH REFERENCES

Am. Jur.

17 Am. Jur. 2d, Contempt §§ 202-204.

7 Am. Jur. Pl & Pr Forms (Rev), Contempt, Form 191 (order of imprisonment until contempt purged); Form 211 (commitment order); Form 251 (undertaking to secure release of persons arrested in contempt proceeding); Forms 271, 272 (affidavit in support of motion for release); Forms 274, 275 (order discharging defendant from custody).

CJS.

17 C.J.S., Contempt §§ 184, 185, 190-193 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December, 1979.

§ 99-37-11. Relief from payment.

If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

HISTORY: Laws, 1978, ch. 400, § 4(5), eff from and after July 1, 1978.

Cross References — Suspension of sentence, see §§ 99-19-25 et seq.
Imposition of standard state assessment in addition to court imposed fines or other penalties for misdemeanors or felonies, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

This section can only be used to revoke a fine if the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment pursuant to Section 99-37-7. There is no authority for such fines to be excused simply due to their age or the fact that the defendant left the state. Lipscomb, April 12, 1996, A.G. Op. #96-0197.

A trial court judge may revoke a fine under the statute upon a finding that an indigent defendant who has defaulted on a fine imposed by the court did not default as a result of contempt. Little, April 17, 1998, A.G. Op. #98-0209.

RESEARCH REFERENCES

Am. Jur.
21A Am. Jur. 2d, Criminal Law § 860.

CJS.
17 C.J.S., Contempt §§ 200 et seq. (remission of fine or discharge from custody).

Law Reviews.
1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 99-37-13. Enforcement of judgment.

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

HISTORY: Laws, 1978, ch. 400, § 4(6), eff from and after July 1, 1978.

Cross References — Property exempt from execution to satisfy judgment or order of contempt, see § 85-3-1.

JUDICIAL DECISIONS

1. In general.
A trial judge in a homicide prosecution erred by ordering a claim against the defendant's workers' compensation benefits to secure payment of restitution since § 71-3-43 provides that workers' compen-

sation benefits are exempt from all creditors' claims and from any remedy for recovery of a debt; moreover, under this section, imposition of levy of execution for the collection of restitution is not authorized until the defendant is in default in his payment, and the defendant could not have been in default since the order of restitution was not yet enforceable where the defendant was also sentenced to imprisonment and the trial judge did not expressly find that he had assets to pay the amount ordered. Green v. State, 631 So. 2d 167, 1994 Miss. LEXIS 13 (Miss. 1994).

OPINIONS OF THE ATTORNEY GENERAL

Although Home Rule gives counties broad authority in matters of local concern, Home Rule does not authorize counties to hire collection agencies to collect delinquent justice court fines in contravention of specific statutory procedures available to justice courts to collect outstanding fines. Smith, March 8, 1990, A.G. Op. #90-0158.

This section allows a criminal judgment sentencing a person to pay a fine, assessments, costs, bond fees or restitution, to be enrolled on the judgment roll. It also allows a criminal defendant's wages to be garnished after default in payment of the fine or other charge. Dunn, Feb. 26, 1992, A.G. Op. #91-0131.

Criminal defendant's wages can be garnished after default in payment of fine or other charge. Lamar, July 8, 1993, A.G. Op. #93-0385.

Municipal court is authorized to collect criminal fines by any means authorized by law for enforcement of judgment and court can not merely write off uncollected fines as "bad debt". Hankins, July 21, 1993, A.G. Op. #93-0448.

Judge may issue warrant of arrest to bring individual who refuses to pay court costs before court and in addition, court may employ any means authorized by law for enforcement of judgment to collect outstanding fines and court costs pursuant to this section. Pearson, March 9, 1994, A.G. Op. #94-0127.

A justice court has the authority to issue a garnishment to collect a fine that has been imposed upon a conviction of a traffic offense but has not been paid by the offender. Fillingane, Oct. 5, 2001, A.G. Op. #01-0637.

RESEARCH REFERENCES

ALR.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

Am. Jur.

29 Am. Jur. 2d, Evidence §§ 409 et seq. (admissibility of criminal conviction).

47 Am. Jur. 2d, Judgments §§ 728 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 99-37-15. Resumption of payment upon release from custody.

Whenever an offender in the custody of the Department of Corrections is paroled, placed on earned probation or other form of release, and when such offender has been sentenced to make restitution pursuant to Section 99-37-3 but with respect to whom payment of all or a portion of the restitution was suspended until his release from confinement, the making of restitution shall be a condition of the offender's release. The commissioner of corrections shall establish a schedule by which payment of the restitution may be resumed. In fixing the schedule and supervising the released offender's performance thereunder, the commissioner shall consider the factors specified in subsection (2) of Section 99-37-3. The commissioner shall provide to the sentencing court a copy of the schedule and any modifications thereof. Such offenders shall make restitution payments directly to the victim.

As an alternative to a contempt proceeding under Sections 99-37-7 through 99-37-13, the intentional refusal to obey the restitution order or a failure by an offender to make a good faith effort to make such restitution may be considered a violation of an offender's release and may be cause for revocation of his parole, earned probation or other form of release.

HISTORY: Laws, 1978, ch. 400, § 5; Laws, 1979, ch. 462, § 6; Laws, 1982, ch. 431, § 7, eff from and after July 1, 1982.

Cross References — Department of Corrections generally, see §§ 47-5-1 et seq.
Commissioner of Corrections powers and duties generally, see § 47-5-28.
Notice requirement prior to release of offenders, see § 47-5-177.
Probation and parole law generally, see §§ 47-7-1 et seq.

RESEARCH REFERENCES

ALR.

Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Am. Jur.

59 Am. Jur. 2d, Pardon and Parole §§ 79, 94, 122.

Law Reviews.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December, 1979.

§ 99-37-17. Civil actions by victims; evidence; damages.

(1) Nothing in this chapter limits or impairs the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to this chapter may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant, if it is involved in a subsequent civil action.

HISTORY: Laws, 1978, ch. 400, § 6, eff from and after July 1, 1978.

OPINIONS OF THE ATTORNEY GENERAL

Person injured in assault has right to sue and recover damages from defendant's criminal activity notwithstanding that defendant may have been ordered to pay restitution. Pearson, Sept. 16, 1992, A.G. Op. #92-0611.

RESEARCH REFERENCES

ALR.

Conviction or acquittal as evidence of the facts on which it was based in civil action. 18 A.L.R.2d 1287.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

Am. Jur.

22 Am. Jur. 2d, Damages §§ 81, 172, 206, 228 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Damages, Forms 111 et seq. (complaints and allegations as to exemplary or punitive damages); Forms 301 et seq. (instructions as to exemplary or punitive damages).

CJS.

25A C.J.S., Damages §§ 240, 321, 322 (exemplary damages for criminal acts).

31A C.J.S., Evidence §§ 637, 638.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 99-37-19. Restitution centers.

The boards of supervisors of the several counties and the governing authorities of municipalities are hereby authorized to cooperate with the Department of Corrections in the establishment of restitution centers. Such centers may house both probationers referred by the circuit courts as well as inmates transferred from other facilities of the Department of Corrections as provided in Section 47-5-110; and may house those contemnors referred by the courts for failure to pay child support. In order to qualify for placement in a restitution center, an offender must: (a) be convicted of a nonviolent offense that constitutes a felony, (b) not be convicted of a sex crime, and (c) not have drug, alcohol, emotional or physical problems so serious that the offender appears unlikely to meet obligations of the restitution program. Such centers shall be operated by the Department of Corrections. County or municipal property may be utilized with the approval of the board of supervisors or municipal governing authority for the construction, renovation and maintenance of facilities owned by the state or a local political subdivision. Such facility may be leased to the Department of Corrections for a period of time for use as a restitution center.

It is the intent of this section that county and local governments contribute only to the establishment, renovation and maintenance of the physical plant of a restitution center and that the Department of Corrections support the operation of, and have sole jurisdiction over and responsibility for offenders in, such restitution program.

HISTORY: Laws, 1978, ch. 400, § 7; Laws, 1986, ch. 428, § 2; Laws, 2003, ch. 552, § 1; Laws, 2005, ch. 376, § 1; Laws, 2007, ch. 350, § 1; Laws, 2009, ch. 367, § 4, eff from and after July 1, 2009.

Cross References — Establishment of restitution centers from expenditures from community service revolving fund, see § 47-7-49.

Authority of courts to refer individuals who have been found in contempt for failure to pay child support and imprisoned therefor, and who meet the qualifications prescribed in this section, for placement in restitution, house arrest or restorative justice center or program, see §§ 9-1-17, 9-5-87, 93-5-23.

RESEARCH REFERENCES

ALR.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

§ 99-37-21. Powers and duties of public welfare and corrections departments as to restitution centers.

(1) The department of public welfare and the department of corrections are hereby authorized to cooperate in the institution and administration of services at restitution centers as authorized by Section 99-37-19 and at other facilities which provide opportunities for restitution for criminal acts.

(2) The department of public welfare and the department of corrections are authorized and directed, jointly or separately:

(a) to seek funding from federal or other sources to provide the maximum supportive services for offenders and the families of offenders who are participating in restitution programs;

(b) to develop additional programs whereby offenders may be afforded opportunities to contribute to society and the support of their families through restitution programs; and

(c) to develop pilot programs of counseling, training and supervision for parolees whereby restitution may be accomplished; such programs may be residential or nonresidential as appropriate.

HISTORY: Laws, 1978, ch. 400, § 8(1), (2), eff from and after July 1, 1978.

RESEARCH REFERENCES

ALR.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

§ 99-37-23. Restitution in delinquency cases.

In delinquency cases before the youth court, the disposition order may include, in addition to any other requirement, restitution not in excess of actual damages caused by the child to be paid out of his assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year.

HISTORY: Laws, 1978, ch. 400, § 8(3), eff from and after July 1, 1978.

Cross References — Disposition alternatives in delinquency cases, see § 43-21-605. Power to order parents to pay child's expenses and restitution, see § 43-21-619.

RESEARCH REFERENCES

ALR.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

§ 99-37-25. Payment by Division of Victim Compensation of costs associated with medical forensic examination and sexual assault evidence collection kit; defendant to make restitution to Division of Victim Compensation.

(1)(a) When a person is brought into a doctor's office, a hospital or a medical clinic by a law enforcement agency as the victim of an alleged rape or sexual assault having occurred in this state, or comes into a doctor's office, a hospital or a medical clinic alleging rape or sexual assault having occurred in this state, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General. The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.

(b) Upon application submitted by the district attorney, provided the proper warrant or court order has been issued, the county in which an offense of sexual assault or of felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, exploitation of children as described in Section 97-5-33 or sexual battery as described in Section 97-3-95, or statutory rape as defined in Section 97-3-65, or an attempt to commit such offense has occurred shall pay for a medical forensic examination of the person arrested, charged or convicted of such offense to determine if the person so arrested, charged or convicted has any sexually transmitted disease and for the collection of evidence. Such payment shall be made by the county directly to the health care provider or other service performing the collection of evidence and tests. At the victim's request, a test for human immunodeficiency virus (HIV) shall be administered to the defendant/accused not later than forty-eight (48) hours after the date on which the information or indictment is presented, and the defendant/accused shall be subjected to follow-up testing for HIV upon a determination that such follow-up testing is medically necessary and reasonable. The results of any such test shall be confidential but shall be made available to the victim or, if the victim is a child, to the guardian of the victim. After an indictment, if the case is dismissed, the defendant is found not guilty or the case is not prosecuted within three (3) years of the indictment, all records of tests shall be returned to the accused or destroyed. Upon a showing of good cause, the court may retain such records and allow a case to remain open after the expiration of the three-year limitation provided herein.

(2) Any defendant who is convicted of, or pleads guilty or nolo contendere to, any offense or an attempt to commit any such offense specified in subsection (1)(b) shall be ordered by the court to make restitution to the Division of Victim Compensation in an amount equal to the compensation paid by the Division of Victim Compensation to the victim or medical provider for the medical forensic examination and to the county for tests for sexually transmitted diseases. Such restitution shall be in addition to any restitution which the court orders the defendant to pay the victim under the provisions of Chapter 37 of Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

(3) The Division of Victim Compensation is hereby authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be available as a result of services rendered to crime victims under the provisions of this section.

HISTORY: Laws, 1987, ch. 466; Laws, 1997, ch. 509, § 1; Laws, 1999, ch. 560, § 1; Laws, 2005, ch. 507, § 1; Laws, 2007, ch. 587, § 1, eff from and after July 1, 2007.

Cross References — District attorneys generally, see §§ 25-31-1 et seq.

Division of victim compensation of the Attorney General's office generally, see §§ 99-41-7, 99-41-9.

Crime Victims' Compensation Fund to pay for sexual assault examinations pursuant to this section, see § 99-41-29.

RESEARCH REFERENCES

ALR.

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 A.L.R.5th 391.

CHAPTER 38.

CRIME VICTIM'S ESCROW ACCOUNT ACT

Sec.

99-38-1.	Short title.
99-38-3.	Definitions.
99-38-5.	Obligation to submit contract with respect to reenactment of crime or expression of defendant's thoughts regarding crime, and to pay over funds due under contract, to Treasurer.
99-38-7.	Deposit of funds into escrow account; registration by crime victims; notice of establishment of escrow account; payments from escrow to victims; notice of filing of claim.
99-38-9.	Disposition of escrow account; mental illness of defendant; payments to defendant; payments to defendant's minor children; payments to Criminal Justice Fund.
99-38-11.	Offenses and penalties.

§ 99-38-1. Short title.

This chapter shall be known and may be cited as the "Crime Victims' Escrow Account Act."

HISTORY: Laws, 1987, ch. 468, § 1, eff from and after July 1, 1987.

Cross References — Victim's right to give victim impact statement for use by court in sentencing criminal defendant, see §§ 99-19-151 through 99-19-161.

Rights of victim in criminal justice system, see § 99-36-5.

Restitution to crime victims, see §§ 99-37-1 et seq.

§ 99-38-3. Definitions.

As used in this chapter the following terms shall have the meanings herein ascribed:

(a) "Accused" shall mean any person who has been indicted for a criminal offense or against whom a criminal prosecution has been commenced;

(b) "Treasurer" shall mean the State Treasurer of the State of Mississippi; and

(c) "Victim" shall mean any person who suffers damages as a result of another person's criminal activities. The term "victim" shall not include any coparticipant in the criminal activities of an accused or convicted person, or any person knowingly participating in a criminal act at the time he became a victim.

HISTORY: Laws, 1987, ch. 468, § 2; Laws, 1992, ch. 422, § 2, eff from and after passage (approved May 4, 1992).

§ 99-38-5. Obligation to submit contract with respect to reenactment of crime or expression of defendant's thoughts regarding crime, and to pay over funds due under contract, to Treasurer.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the legal representative, assignee, beneficiary or heirs at law of any person accused or convicted of a crime in this state, with respect to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph record, photograph, reproduction, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the Treasurer and pay over to the Treasurer any monies which would otherwise, by the terms of such contract, be owing to the person so accused or convicted or his legal representative, assignee, beneficiary or heirs at law.

HISTORY: Laws, 1987, ch. 468, § 3, eff from and after July 1, 1987.

Cross References — Restitution to crime victims generally, see §§ 99-37-1 et seq.

Penalties for failure to comply with the provisions of this chapter, see § 99-38-11.

Disposition of funds received pursuant to this section, see §§ 99-38-7, 99-38-9.

Penalties for failure to comply with provisions of this section, and enforcement by Attorney General, see § 99-38-11.

JUDICIAL DECISIONS

1. Applicability.

Defendant's claim of an illegal sentence was not subject to the time bar of three years set forth in Miss. Code Ann. § 99-38-5(2) because errors affecting a fundamental constitutional right were excepted from the time bar; although defendant was sentenced over eight years ago and her probation was revoked six years ago, the appellate court would address the merits of her claim. Miller v. State, 879 So. 2d 1050, 2004 Miss. App. LEXIS 546 (Miss. Ct. App.), cert. denied, 887 So. 2d 183, 2004 Miss. LEXIS 1347 (Miss. 2004).

§ 99-38-7. Deposit of funds into escrow account; registration by crime victims; notice of establishment of escrow account; payments from escrow to victims; notice of filing of claim.

(1) The Treasurer shall deposit such monies as he receives under the provisions of Section 99-38-5, within seven (7) days from the receipt thereof, in an interest-bearing escrow account in the name of the person accused or convicted, for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by an accused or convicted person.

(2) Any person, or the legal representative of any person, who is the victim of a crime may register with the Treasurer and request to be notified of the establishment of an escrow account under the provisions of this chapter. Such registration shall include the name and address of the victim and his legal

representative if applicable, an identification by name of the person accused or convicted of an offense against the victim, the location where and the date upon which such offense occurred, and such other information as the Treasurer shall require. The Treasurer shall immediately notify, by United States mail, the victim or the legal representative of any victim who has registered with the Treasurer upon the establishment of an escrow account for the benefit of any such registered victim. In addition, the Treasurer shall, at least once every four (4) months for one (1) year from the date he receives monies under the provisions of Section 99-38-5, cause to have published a legal notice in some newspaper having a general circulation in the county in which the crime was committed and in counties contiguous to such county advising any and all victims that escrow monies are available to satisfy money judgments pursuant to this chapter. All costs and expenses incurred by the Treasurer in giving the notice and making publication required by this subsection shall be paid from funds in the escrow account. Payments may be made pursuant to this chapter to the victim or his legal representative only if the accused person is convicted or enters a plea of guilty of the crime, and provided that the victim or his legal representative, within one (1) year of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his legal representative, assignee, beneficiary or heirs at law. The Treasurer shall disburse payments on a pro rata basis of all claims filed according to the amount of money in the escrow account comparable to the amount of each such claim; provided, however, such sums shall not be disbursed until all pending claims have been settled or reduced to judgment.

(3) It shall be the duty of the victim, the victim's lawyer or the victim's legal representative to notify the Treasurer within thirty (30) days of filing any claim under this chapter.

HISTORY: Laws, 1987, ch. 468, § 4, eff from and after July 1, 1987.

Cross References — Transfer of monies from escrow account to Criminal Justice Fund where no civil actions are pending under this section, see § 99-38-9.

Penalties for failure to comply with the provisions of this chapter, see § 99-38-11.

§ 99-38-9. Disposition of escrow account; mental illness of defendant; payments to defendant; payments to defendant's minor children; payments to Criminal Justice Fund.

(1) The Treasurer shall make payments from an escrow account established under Section 99-38-5 to the accused or convicted person in whose name the account was established upon the order of a court of competent jurisdiction, after a showing by the person that those monies will be used for the exclusive purpose of retaining legal representation at any stage of any criminal proceedings against the person, including the appeals process.

(2) Whenever it is found that a person accused of a crime is unfit to proceed as a result of mental illness because the person lacks the capacity to

understand the proceedings against him or to assist in his own defense, the Treasurer shall bring an action of interpleader to determine disposition of the escrow account. For the purposes of this chapter, a person found not guilty by reason of insanity shall be deemed to be a convicted person.

(3) Except as otherwise provided in subsection (4) of this section, upon dismissal of charges or acquittal or subsequent exoneration of any person accused of an offense arising out of the same circumstances that led to the establishment of an escrow account under this chapter, the Treasurer shall immediately pay over to the accused person, his legal representative, assignee, beneficiary or heirs at law the monies in the escrow account established on his or their behalf. Except as otherwise provided in subsection (4) of this section, upon a showing that the accused person has been convicted or has pleaded guilty to an offense for which an escrow account has been established under this chapter and that one (1) year has elapsed from the time of establishment of the escrow account, and that no civil actions are pending under the provisions of subsection (2) of Section 99-38-7, the Treasurer shall immediately transfer all monies in the escrow account established in the name of the accused person, less such costs and expenses as the Treasurer incurs in the administration of the account, to the Criminal Justice Fund created in Section 99-19-32.

(4) Notwithstanding the provisions of subsection (3), upon a showing that one (1) year has elapsed from the time of the establishment of the escrow account and that no civil actions are pending under the provisions of Section 99-38-7(2), and upon a showing that the accused in whose name the account is established is the parent of one or more minor children and that the minor children are in need of financial support, the chancery court of the district in which the minor children reside may order the Treasurer to pay over an amount set by the court for the support of those children until they reach the age of majority. Upon order of the court, the Treasurer shall pay the specified amount to a guardian appointed by the court for the use and benefit of the minor children. In no event shall the total amount to be paid for the support of any minor children of the accused in whose name the account is established exceed the amount of money in the account at the time the court issues its order.

(5) The Treasurer shall be authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

HISTORY: Laws, 1987, ch. 468, § 5; Laws, 2008, ch. 442, § 40, eff from and after July 1, 2008.

Cross References — Deposit of funds received under the provisions of § 99-38-5 into escrow account, see § 99-38-7.

Penalties for failure to comply with the provisions of this chapter, see § 99-38-11.

§ 99-38-11. Offenses and penalties.

(1) It shall be unlawful for any person, firm, corporation, partnership, association or other legal entity to fail to comply with the provisions of this chapter.

(2) Any person, firm, corporation, partnership, association or other legal entity violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction of the violation, shall be punished as for a misdemeanor.

(3) Each day any such person, firm, corporation, partnership, association or other legal entity continues in violation of the provisions of this chapter shall constitute a separate offense.

(4) Any action taken by any person accused or convicted of a crime or who enters a plea of guilty of a crime, or by a person or legal entity with whom any such person contracts as set forth in Section 99-38-5, whether by way of execution of a contract or agreement outside of this state, execution of a power of attorney, donation, creation of corporate entities, or otherwise, to defeat the purpose of this chapter shall be null and void as against the public policy of the state.

(5) In addition to such powers and duties of the Attorney General of this state as are otherwise authorized and prescribed by law, the Attorney General shall be authorized to bring a civil action in any court of competent jurisdiction to enforce the obligations of a contracting party to make payment to the Treasurer of such monies as are required to be paid to the Treasurer under the provisions of Section 99-38-5.

HISTORY: Laws, 1987, ch. 468, § 6, eff from and after July 1, 1987.

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

Article 1. Mississippi Uniform Post-Conviction Collateral Relief Act. 99-39-1
Article 3. Mississippi Capital Post-Conviction Counsel Act. 99-39-101

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

Sec.
99-39-1. Short title.
99-39-3. Purpose.
99-39-5. Grounds for relief; time limitations; "biological evidence" defined.
99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.
99-39-9. Requirements of motion and service.
99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.
99-39-13. Answer; affirmative defenses.
99-39-15. Requests for discovery.
99-39-17. Expansion of record.
99-39-19. Evidentiary hearing; summary judgment.
99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.
99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.
99-39-25. Right to appeal; stay of judgment; bail on appeal.
99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.
99-39-28. Supreme Court to establish rules for post-conviction proceedings in capital cases.
99-39-29. Stay of death penalty execution.

§ 99-39-1. Short title.

This article shall be known and may be cited as the "Mississippi Uniform Post-Conviction Collateral Relief Act."

HISTORY: Laws, 1984, ch. 378, § 1.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Cross References — Appearance by criminal defendant held in custody or confinement by means of closed-circuit television, see § 99-1-23.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18

Appealability of circuit court hearing regarding sanity of prisoner under death sentence, see § 99-19-57.

Mississippi Capital Post-Conviction Counsel Act, see §§ 99-39-101 et seq.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Post-conviction motion properly denied.
3. Post-conviction relief improperly denied.
4. Post-conviction relief properly granted.
5. Issues raised on appeal.

1. In general.

In a case in which defendant appealed his sentence of death by lethal injection for violating Miss. Code Ann. § 97-3-19(2)(f), he argued his lawyer's ineffective assistance prevented him from receiving the benefit of the plea agreement with the State, which would have resulted in a sentence of life imprisonment rather than death. That issue was better suited for future post-conviction-relief proceedings commenced pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 to 99-39-29. Wilson v. State, 21 So. 3d 572, 2009 Miss. LEXIS 450 (Miss. 2009), cert. denied, 560 U.S. 909, 130 S. Ct. 3282, 176 L. Ed. 2d 1191, 2010 U.S. LEXIS 3966 (U.S. 2010).

Where appellant was incarcerated on a conviction and sentence imposed by the Clay County Circuit Court in Mississippi, the Circuit Court of Marshall County, Mississippi, lacked jurisdiction to treat his petition for an order to show cause as a motion for post-conviction relief under Miss. Code Ann. §§ 99-39-1 to 99-39-29. Due to the lack of jurisdiction, the Circuit Court of Marshall County should have treated appellant's filings as non-post-conviction relief filings. Dennis Dobbs v. State, 6 So. 3d 1085, 2009 Miss. LEXIS 165 (Miss. 2009).

Where appellant challenged his thirty-year sentence for the unlawful sale of cocaine, he filed a motion to reconsider. Because appellant did not directly appeal his conviction or proceed under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29, the appeal of the order denying his motion to reconsider was not properly before the court. Alexander v. State, 979 So. 2d 716, 2007 Miss. App. LEXIS 755 (Miss. Ct. App. 2007).

Appellate court had no jurisdiction over an appeal of a trial court's order revoking the suspension of a defendant's sentence because the correct vehicle for redress was a petition for post-conviction relief. Payne v. State, 966 So. 2d 1266, 2007 Miss. App. LEXIS 726 (Miss. Ct. App. 2007).

Appellate court lacked jurisdiction to hear the denial of a motion for post-conviction relief because defendant did not file a notice of appeal within 30 days as required by Miss. R. App. P. 4(a); it declined to suspend the requirement under Miss. R. App. P. 2(c) because defendant did not try to reopen the time for appeal or seek an extension. Minchew v. State, 967 So. 2d 1244, 2007 Miss. App. LEXIS 260 (Miss. Ct. App. 2007).

There is no procedure for filing a "notice" of post-conviction relief; therefore, a trial court did not err by treating a "notice" as a motion where the filing clearly stated that it was a motion and that defendant was moving for post-conviction relief. Adams v. State, 962 So. 2d 640, 2007 Miss. App. LEXIS 38 (Miss. Ct. App. 2007).

Where a defendant raised ineffective assistance of counsel on direct appeal, and raises it again in a post-conviction proceeding, supported by extraneous materials that were not available on direct appeal, an appellate court's consideration of the issue is not barred by res judicata; where the defendant raises ineffective assistance of counsel at the post-conviction stage, and it is the same issue raised on

direct appeal but only rephrased, res judicata will apply. Hodges v. State, 949 So. 2d 706, 2006 Miss. LEXIS 692 (Miss. 2006), cert. denied, 552 U.S. 1061, 128 S. Ct. 705, 169 L. Ed. 2d 552, 2007 U.S. LEXIS 12873 (U.S. 2007).

Defendant was entitled to an evidentiary hearing on his petition for post-conviction relief on the voluntariness of his guilty plea because the prosecutor's letter clearly indicated that erroneous advice was given which implicated the voluntariness of defendant's plea; the discrepancy between the reality of defendant's sentence and the advice given by the prosecutor was apparent. Haynes v. State, 944 So. 2d 121, 2006 Miss. App. LEXIS 891 (Miss. Ct. App. 2006).

On the inmate's petition for post-conviction relief, the court held that the inmate was not prejudiced by counsel's failure to transcribe the full record because the inmate did not claim any specific error arising from the non-transcribed sections of the record. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

On the inmate's petition for post-conviction relief, the court held that counsel was not ineffective for failing to present mitigating evidence at sentencing because it was the inmate's choice not to do so; the inmate was fully apprised of the consequences of his choice and he made an informed and voluntary decision not to present mitigating evidence. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

On the inmate's petition for post-conviction relief, the court held that defense counsel's decision not to seek a change of venue based on pretrial publicity was beyond its review. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

Post-conviction relief petition was not dismissed based on the state's allegation that the writ was successive because the issue was not raised before the trial court or in an appellate brief. Knight v. State, 956 So. 2d 264, 2006 Miss. App. LEXIS 663 (Miss. Ct. App. 2006), sub. op., 959 So. 2d 598, 2007 Miss. App. LEXIS 444 (Miss. Ct. App. 2007).

Defendant's application for relief was styled "Petition of Writ for Habeas Corpus," but the circuit court was correct in construing his application for relief as a post-conviction relief claim as his request for relief, in essence, was simply a challenge to the validity of his life sentence. Therefore, his request for relief was a motion for post-conviction relief; moreover, purely collateral post-conviction remedies attacking a judgment of conviction or sentence were to be sought under authority of the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), Miss. Code Ann. §§ 99-39-1 through 99-39-29. Trotter v. State, 907 So. 2d 397, 2005 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 456 (Miss. 2005).

Appeal filed by the petitioner challenging the circuit court's order denying his request for free copies of the records and transcripts of his guilty plea, was dismissed for lack of jurisdiction because the petitioner's only means of appellate review was to follow the procedures set forth in the Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29, since he entered a guilty plea, and the petitioner had not followed the Act's procedures; nothing in the Uniform Post-Conviction Collateral Relief Act or elsewhere gave the petitioner the right to institute an independent, original action for a free transcript or other documents, and then if dissatisfied with the trial court's ruling, to directly appeal that ruling to the appellate court as a separate and independent action. Shanks v. State, 906 So. 2d 760, 2004 Miss. App. LEXIS 1136 (Miss. Ct. App. 2004).

No defendant may be granted a hearing on the issue of Eighth Amendment protection from execution due to alleged mental retardation unless, prior to the expiration of the deadline set by the trial court for filing motions, the defendant shall have filed with the trial court a motion seeking such a hearing, and the defendant must attach to the motion an affidavit from at least one expert who opines, to a reasonable degree of certainty, that: (1) the defendant has a combined Intelligence Quotient ("IQ") of 75 or below, and (2) in the opinion of the expert, there is a reasonable basis to believe that, upon further testing, the defendant will be found to be mentally retarded; the court further holds that, for defendants whose trials were held prior to publication of this opinion, the affidavit as described above shall be attached to the defendant's application for post-conviction relief, and such application shall then be considered pursuant to the provisions of Miss. Code Ann. §§ 99-39-1 et seq. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

Inmate's request for leave to file an application seeking post-conviction relief was denied because the inmate was unable to show that the imposition of the death penalty was the result of ineffective assistance of counsel since defense counsel objected to the testimony of a pathologist, the admission of certain photographs, and a confession; moreover, the inmate failed to show how the introduction of medical records would have persuaded the jury to exercise leniency, and the inmate failed to show how a government-funded expert would have disputed the finding of the State's expert. Holland v. State, 878 So. 2d 1, 2004 Miss. LEXIS 413 (Miss. 2004), cert. denied, 544 U.S. 906, 125 S. Ct. 1590, 161 L. Ed. 2d 280, 2005 U.S. LEXIS 2273 (U.S. 2005).

Inmate's request for leave to file an application seeking post-conviction relief was denied because the State was not required to give notice of the aggravating factors in a death penalty case by listing them in an indictment; moreover, the Mississippi Supreme Court rejected the retroactive application of another decision dealing with such because there was no express pronouncement of its retroactivity. Holland v. State, 878 So. 2d 1, 2004 Miss. LEXIS 413 (Miss. 2004), cert. denied, 544 U.S. 906, 125 S. Ct. 1590, 161 L. Ed. 2d 280, 2005 U.S. LEXIS 2273 (U.S. 2005).

Appellate court affirmed the trial court's denial of post-conviction relief, but the record sent up with the appeal indicated that defendant might have been twice convicted and sentenced for the same crime; therefore, the trial court inadvertently failed to enter an order granting the motion for a new trial and setting aside defendant's earlier conviction and sentence. Haley v. State, 864 So. 2d 1022, 2004 Miss. App. LEXIS 52 (Miss. Ct. App. 2004).

Mississippi Post-Conviction Collateral Relief Act does not suspend the writ of habeas corpus in violation of Miss. Const. Art. III, § 21, as the act is merely a codification of existing constraints on review traditionally practiced by the Mississippi Supreme Court. Putnam v. State, 877 So. 2d 468, 2003 Miss. App. LEXIS 1205 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 861 (Miss. 2004).

Trial court properly denied defendant's petitions for post-conviction relief, Miss. Code Ann. §§ 99-39-1 et seq., because defendant was adequately informed of the possible consequences of pleading guilty, and defendant did not receive ineffective assistance of counsel. Rodolfich v. State, 858 So. 2d 221, 2003 Miss. App. LEXIS 989 (Miss. Ct. App. 2003).

Inmate's petition for post-conviction relief was properly denied because nothing in the record indicated that the inmate's plea to manslaughter was not knowing or voluntary. Hollingsworth v. State, 852 So. 2d 612, 2003 Miss. App. LEXIS 925 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 867 (Miss. Ct. App. 2003).

Petition for post-conviction relief based on ineffective assistance of counsel was properly denied because an inmate failed to show that allegedly discoverable evidence would have been exculpatory in light of a co-defendant's statement that implicated the inmate in a murder. Hollingsworth v. State, 852 So. 2d 612, 2003 Miss. App. LEXIS 925 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 867 (Miss. Ct. App. 2003).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, defendant was fully informed of the nature of the charge against him, the rights he would waive by pleading guilty, and the maximum sentence he could receive, and he expressed full satisfaction with his attorney, denying that he had been coerced into pleading guilty; thus, defendant entered his plea voluntarily, knowingly, and intelligently and his motion for post-conviction relief was properly denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, the record lacked any evidence that defendant presented himself as anything but mentally competent and there was no evidence to indicate that defendant's attorney was on notice of any psychiatric problem or that defendant's mind was or could be impaired; thus, there was no basis for defendant's attorney to request a mental evaluation for defendant, he was not incompetent for failing to request a mental evaluation for defendant, and defendant's motion for post-conviction relief was properly denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

Appellate court initially noted defendant did not argue that her guilty pleas were involuntary or that she relied on mistaken advice from her attorney regarding parole eligibility, earned or meritorious time; defendant simply asserted that she was unaware of her ineligibility for parole, earned time, and meritorious time, and as such, defendant was procedurally barred from discussing the issue for the first time on appeal. Stewart v. State, 845 So. 2d 744, 2003 Miss. App. LEXIS 436 (Miss. Ct. App. 2003).

Without waiving the procedural bar to the inmate's claim that the inmate's sentence was unconstitutional, the court held that the inmate was properly charged under Miss. Code Ann. § 97-9-45 and entered a plea of guilty to the escape, and the sentence of three years was well within the maximum prescribed by the statute, which referred to prisoners sentenced to the Mississippi Department of Corrections and allowed a maximum sentence of five years, and thus the inmate was not entitled to post-conviction relief; although the inmate was in custody and on a work program for a county at the time of the escape, the inmate was considered under the Department's jurisdiction for purposes of § 97-9-45 because (1) the inmate's original burglary sentence required imprisonment in the "penitentiary" under Miss. Code Ann. § 97-17-23, which term meant any facility under the jurisdiction of the Department pursuant to Miss. Code Ann. § 47-5-3, (2) commitment to any institution within the jurisdiction of the Department was to the Department, not a particular institution pursuant to Miss. Code Ann. § 47-5-110, and (3) under Miss. Code Ann. § 47-5-541, the Department recommended rules concerning the participation of inmates in work programs. Gardner v. State, 848 So. 2d 900, 2003 Miss. App. LEXIS 570 (Miss. Ct. App. 2003).

Inmate's motion for post-conviction relief after a guilty plea to possession of cocaine was properly denied because the inmate was unable to show that the plea was involuntary, that counsel was ineffective, or that the sentence imposed was excessive. Gunter v. State, 841 So. 2d 195, 2003 Miss. App. LEXIS 249 (Miss. Ct. App. 2003).

Circuit court's failure at sentencing hearing to elicit responses from defendant regarding his desire to appeal his case, his understanding of time frame in which he could make appeal and his financial ability to pursue appeal did not entitle defendant to out-of-time appeal, where defense counsel obtained signed witness statement indicating that defendant did not wish to appeal immediately following sentencing hearing, and circuit court conducted full-scale evidentiary hearing as to whether to allow out-of-time appeal. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

While it is preferable for circuit court to make some inquiries as to whether defendant understands the rights of which he has been advised at sentencing hearing, where there has been full-scale evidentiary hearing as to whether out-of-time appeal should be allowed, fact that trial judge merely advised defendant of his or her right to appeal does not, in and of itself, warrant grant of out-of-time appeal. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Defendant's case had achieved finality before Batson v. Kentucky (1986) 476 U.S. 79, 90 L. Ed. 2d 69, 106 S. Ct. 1712, was rendered, so prosecution's use of peremptory challenges to strike blacks need not be reviewed under dictates of Batson. Relief sought under Mississippi Uniform Post-Conviction Collateral Relief Act is not direct appeal, but is instead collateral review. Caldwell v. State, 517 So. 2d 1360, 1987 Miss. LEXIS 2822 (Miss. 1987).

The Mississippi Uniform Post-Conviction Collateral Relief Act is largely a codification of existing law. Dufour v. State, 483 So. 2d 307, 1985 Miss. LEXIS 2357 (Miss. 1985), cert. denied, 479 U.S. 891, 107 S. Ct. 292, 93 L. Ed. 2d 266, 1986 U.S. LEXIS 4333 (U.S. 1986).

2. Post-conviction motion properly denied.

There was no indication that medications affected petitioner's ability to plead guilty, and as he did not include an affidavit from his doctor or any other medical evidence to support his claim that medications affected the voluntariness of his plea, and no ineffective assistance of counsel was shown, he was not entitled to an evidentiary hearing or post-conviction relief. Shelton v. State, — So. 3d —, 2019 Miss. App. LEXIS 185 (Miss. Ct. App. Apr. 30, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 432 (Miss. 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 375 (Miss. 2019).

Trial court did not err in dismissing appellant's motion for post-conviction relief because no evidence was presented that appellant was misinformed during his sentencing hearing; under Miss. Code Ann. § 47-7-3(1)(h) appellant was not eligible for parole, and the trial court stated repeatedly at the sentencing hearing that the only sentence that could be imposed was life imprisonment. Collier v. State, 112 So. 3d 1088, 2013 Miss. App. LEXIS 221 (Miss. Ct. App. 2013).

Defendant's petition for post-conviction relief was properly denied because defendant's guilty plea waived defendant's constitutional rights against self-incrimination and to have each element of the offense proved beyond a reasonable doubt, and defendant failed to show that trial counsel was ineffective in failing to object to the State's evidence and to suppress defendant's statements. Estes v. State, 120 So. 3d 429, 2013 Miss. App. LEXIS 64 (Miss. Ct. App.), cert. denied, 119 So. 3d 328, 2013 Miss. LEXIS 454 (Miss. 2013).

Trial court did not err in denying an inmate's motion for post-conviction relief on the ground that his appellate counsel failed to note his trial counsel's failure to investigate and challenge a juror's inclusion on the jury because there was nothing in the record confirming that the juror actually served on the jury, and the inmate failed to show how the juror's alleged presence on the jury prejudiced his case. Lattimore v. State, 37 So. 3d 678, 2010 Miss. App. LEXIS 50 (Miss. Ct. App. 2010).

Trial court did not err in denying an inmate's motion for post-conviction relief because the record contained sufficient evidence that the inmate pleaded guilty to culpable-negligence manslaughter, Miss. Code Ann. § 97-3-47, and aggravated assault, Miss. Code Ann. § 97-3-7, with knowledge and understanding of the elements of each crime when the prosecutor's on-the-record statement reiterated the charging language in the indictment and evinced an accurate showing that the inmate was informed of the essential elements of the crimes; factual bases existed for the pleas because there was substantial evidence that the inmate committed the crimes. and through his plea petitions, the inmate was specifically informed of the statutory maximum and minimum punishment that each crime carried. Williams v. State, 31 So. 3d 69, 2010 Miss. App. LEXIS 46 (Miss. Ct. App. 2010).

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because the inmate was not entitled to credit for time served in Tennessee. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because pursuant to Miss. Code Ann. § 9-23-15, the inmate had no right to attend drug court. the inmate had no right to have his case transferred to the drug court. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because the inmate provided no proof, other than his own affidavit, that his counsel rendered ineffective assistance; the inmate's only claim of prejudice was that he entered a guilty plea as a result of his counsel's conduct, but the inmate's signed plea petition stated that he was fully satisfied with the competent advice and help of his counsel, and the inmate stated under oath that he was satisfied with the services rendered by his counsel and that he had no complaints whatsoever about his representation. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because the circuit court was not required to follow the recommendation of the State contained in the inmate's plea petition; the plea petition the inmate signed clearly stated that the inmate understood that the agreement was not binding on the circuit court, and the inmate stated that he understood that the circuit court could accept his plea and give him the maximum sentence. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Inmate waived any argument as to any possible evidentiary defects in his indictment charging him as a habitual offender for felony shoplifting pursuant to Miss. Code Ann. § 97-23-93(7) because by entering his guilty plea, the inmate fully admitted to the circuit court that he was guilty of shoplifting merchandise with a value greater than $ 500, and that testimony was sufficient to constitute felony shoplifting under § 97-23-93(7), Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Where appellant entered a plea of guilty to statutory rape under Miss. Code Ann. § 97-3-65(1)(b), he waived any defect in the indictment and his right to a speedy trial; and he did not provide any factual or evidentiary basis to support his claims of ineffective assistance of counsel. The circuit court did not err by denying his motion for post-conviction relief. Maggitt v. State, 26 So. 3d 363, 2009 Miss. App. LEXIS 250 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 38 (Miss. 2010).

Post-conviction relief was denied because there was no indication that a request was made to have a newly discovered witness testify at an evidentiary hearing, and all of the information that was characterized as newly discovered evidence by appellant inmate was nothing more than hearsay and impeachment evidence. Moreover, even if there had been an attempt to introduce a television schedule, it was not newly discovered since it was available at the inmate's trial. Penny v. State, 23 So. 3d 517, 2009 Miss. App. LEXIS 235 (Miss. Ct. App.), cert. denied, 22 So. 3d 1193, 2009 Miss. LEXIS 620 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate contended that his plea was not knowing and voluntary based on counsel's alleged assertion that the inmate would not receive the maximum sentence; an appellate court gave significant weight to the statements that the inmate made during the plea colloquy. He stated that he was not promised favors or inducements to plead guilty and that no one tried to force or threaten him to plead guilty. Kambule v. State, 19 So. 3d 120, 2009 Miss. App. LEXIS 160 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 488 (Miss. 2009), cert. denied, 560 U.S. 941, 130 S. Ct. 3354, 176 L. Ed. 2d 1249, 2010 U.S. LEXIS 4511 (U.S. 2010).

Post-conviction relief was denied in a case where appellant inmate contended that he received ineffective assistance of counsel under U.S. Const. Amend. VI because, even if the inmate was given hope of a lesser sentence, counsel filed more than 20 pretrial motions and secured a plea that avoided a death sentence for capital murder; moreover, the inmate stated under oath that he was satisfied with counsel. Even if the second prong of the ineffective assistance of counsel test had been analyzed, the inmate did not demonstrate that the allegedly deficient performance prejudiced him such that, but for the belief expressed by counsel, there was a reasonable probability the inmate would have insisted on going to trial rather than pleading guilty. Kambule v. State, 19 So. 3d 120, 2009 Miss. App. LEXIS 160 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 488 (Miss. 2009), cert. denied, 560 U.S. 941, 130 S. Ct. 3354, 176 L. Ed. 2d 1249, 2010 U.S. LEXIS 4511 (U.S. 2010).

In denying a petition of post-conviction relief, a trial court did not err in denying petition because discrepancy in the circuit court's oral pronouncements revoking post-release supervision and the written revocation order was nothing more than scrivener's errors. Spratt v. State, 15 So. 3d 480, 2009 Miss. App. LEXIS 151 (Miss. Ct. App. 2009).

Motion for post-conviction relief was denied because Miss. R. Evid. 609 had no bearing upon the use of prior convictions to enhance a sentence; moreover, the prior convictions in this case met the requirements under Miss. Code Ann. § 99-19-81, and there was no provision limiting the use of prior convictions that were over 10 years old. Shies v. State, 19 So. 3d 770, 2009 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 504 (Miss. 2009).

Post-conviction relief was properly denied in a case involving a probation revocation because the State had adequately established that there was a violation of the terms and conditions of probation due to appellant inmate admission to such; moreover, his probation was not revoked simply due to a failure to pay fines and fees. Silliman v. State, 8 So. 3d 256, 2009 Miss. App. LEXIS 115 (Miss. Ct. App. 2009).

Post-conviction relief was properly denied in a case involving a probation revocation because appellant inmate did not have the right to counsel since the issues were not complex, and no request for counsel was made. It was noted that the inmate had admitted to violating his probation. Silliman v. State, 8 So. 3d 256, 2009 Miss. App. LEXIS 115 (Miss. Ct. App. 2009).

Defendant's motion for post-conviction relief was properly dismissed as his ineffective assistance of counsel argument was rebutted by a lack of evidence, as well as his own statements; defendant's plea agreement was entered into knowingly, willingly, and voluntarily, and was not the result of any threats or coercion. Starks v. State, 992 So. 2d 1245, 2008 Miss. App. LEXIS 632 (Miss. Ct. App. 2008).

Appellant inmate's motion for post-conviction relief was properly denied because, inter alia, an argument that the inmate was not given a valid term of post-supervision release based on his status as a convicted felon was rejected; the inmate's sentence was suspended under Miss. Code Ann. § 47-7-34, not under Miss. Code Ann. § 47-7-33. Garner v. State, 21 So. 3d 629, 2008 Miss. App. LEXIS 636 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 571 (Miss. Nov. 19, 2009).

Appellant inmate's motion for post-conviction relief was properly denied because he failed to show that he received ineffective assistance of counsel based on a failure to object to the terms of a sentence; the inmate also failed to show that his plea was involuntary based on alleged misinformation given by trial counsel regarding sentencing. Garner v. State, 21 So. 3d 629, 2008 Miss. App. LEXIS 636 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 571 (Miss. Nov. 19, 2009).

State's motion to dismiss a defendant's appeal was granted where the defendant had forfeited her right to a direct appeal by her guilty plea to armed robbery and where her motion for records and transcripts did not accompany a petition for post-conviction collateral relief, under the Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29. Krickbaum v. State, 990 So. 2d 796, 2008 Miss. App. LEXIS 576 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a case where appellant inmate's post-release supervision (PRS) and suspended sentences were revoked because the inmate was on state PRS the moment that he was released from federal custody. Therefore, there was no error in revoking his PRS based on an arrest for drugs shortly after his release from federal custody. Lenoir v. State, 4 So. 3d 1056, 2008 Miss. App. LEXIS 585 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 122 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate's post-release supervision and suspended sentences were revoked because the inmate was merely ordered to serve the remainder of his sentence under Miss. Code Ann. § 47-7-37; therefore, he was not entitled to a milder sentence for forgery, pursuant to Miss. Code Ann. § 99-19-33. Lenoir v. State, 4 So. 3d 1056, 2008 Miss. App. LEXIS 585 (Miss. Ct. App. 2008), cert.

denied, 11 So. 3d 1250, 2009 Miss. LEXIS 122 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate had pled guilty to the offense of statutory rape because ineffective assistance of counsel was not established; the inmate stated that he was satisfied with his counsel's service and that his attorney had explained the plea petition. He offered no evidence, other than his own allegations, to show that counsel's performance was deficient; moreover, there was no need to contact witnesses to testify as to the inmate's innocence based on his admissions. Kimble v. State, 2 So. 3d 688, 2008 Miss. App. LEXIS 526 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 94 (Miss. 2009), cert. denied, 557 U.S. 909, 129 S. Ct. 2801, 174 L. Ed. 2d 300, 2009 U.S. LEXIS 4498 (U.S. 2009).

Post-conviction relief was denied in a case where appellant inmate had pled guilty to the offense of statutory rape because there was a factual basis for the plea under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3); a child stated that she had sexual intercourse with the inmate, a relative saw the inmate and the child exiting a house together before the child was taken to the hospital, and the inmate admitted that his biological evidence was found inside the child's vagina. Kimble v. State, 2 So. 3d 688, 2008 Miss. App. LEXIS 526 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 94 (Miss. 2009), cert. denied, 557 U.S. 909, 129 S. Ct. 2801, 174 L. Ed. 2d 300, 2009 U.S. LEXIS 4498 (U.S. 2009).

Post-conviction relief was denied in a case where appellant inmate had pled guilty to the offense of statutory rape because the plea was voluntarily given under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3); there was no assertion that the plea was induced by fear, violence, or deception. Although an attorney explained to the trial court why the inmate felt he was not guilty, the inmate admitted that he was guilty of each element of the crime. Kimble v. State, 2 So. 3d 688, 2008 Miss. App. LEXIS 526 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 94 (Miss. 2009), cert. denied, 557 U.S. 909, 129 S. Ct. 2801, 174 L. Ed. 2d 300, 2009 U.S. LEXIS 4498 (U.S. 2009).

Denial of post-conviction relief was proper as the sentence imposed was within the statutory mandate, the petitioner failed to claim his guilty plea to touching a child for lustful purposes under Miss. Code Ann. § 97-5-23(1) was not freely, voluntarily, and intelligently given, and he did not request a reversal of his guilty plea due to his trial counsel's alleged ineffective assistance. Lewis v. State, 988 So. 2d 942, 2008 Miss. App. LEXIS 472 (Miss. Ct. App. 2008).

Defendant's motion for post-conviction relief was properly denied as defendant did not make a prima facie showing that he was denied ineffective assistance of counsel so as to allow him to have an evidentiary hearing on the issue before the trial court where the officer had sufficient probable cause to pull defendant over; the search of defendant's vehicle which produced the handgun was lawful, and had defendant's case gone to trial, the trial court would not have committed error by allowing the gun into evidence; thus, defendant's trial counsel could not be found to have rendered ineffective assistance by failing to file a motion to suppress this evidence prior to defendant's offer of his Alford plea. Moore v. State, 986 So. 2d 928, 2008 Miss. LEXIS 326 (Miss. 2008).

Defendant's motion for post-conviction relief was properly denied where defendant did not receive ineffective assistance of counsel as his guilty plea was voluntarily entered and he acknowledged that he was satisfied with his lawyer's performance; defendant was adequately questioned and advised of his potential sentence, and his plea was knowing and voluntary; the multi-count indictment was not defective, Miss. Code Ann. § 99-7-2. Davis v. State, 5 So. 3d 435, 2008 Miss. App. LEXIS 366 (Miss. Ct. App. 2008).

Trial court did not err by denying post-conviction relief for an alleged illegal sentence for possession of cocaine with intent to sell because a five-year, post-release supervision portion of defendant's sentence was valid under Miss. Code Ann. § 47-4-34 and because the sentence did not improperly amount to a life sentence where age was specifically recognized during sentencing. Long v. State, 982 So. 2d 1042, 2008 Miss. App. LEXIS 328 (Miss. Ct. App. 2008).

Where the trial court granted appellant's motion to reconsider his sentence and suspended ten years of his twenty-year sentence for manslaughter, appellant failed to protest during resentencing and failed to show how counsel was ineffective. The trial court did not err by denying his motion for post-conviction relief. Steele v. State, 991 So. 2d 176, 2008 Miss. App. LEXIS 303 (Miss. Ct. App. 2008).

Trial court properly denied defendant's motion for post-conviction relief after defendant pled guilty to the sale of cocaine where Miss. Unif. Cir. & Cty. R. 8.04(A)(4) did not require that the trial judge inform defendant that defendant had the right to appeal the sentence; in any event, defendant's eight-year sentence was well below the maximum sentence for the sale of cocaine. Coleman v. State, 979 So. 2d 731, 2008 Miss. App. LEXIS 196 (Miss. Ct. App. 2008).

Trial court properly denied defendant's motion for post-conviction relief where defendant was not entitled to a jury of any particular racial composition; therefore, defendant could not show that counsel was deficient in failing to object to an all-white jury. It was impossible to prove that counsel's objection to the jury composition would have created a different result if no original verdict was reached. Shumpert v. State, 983 So. 2d 1074, 2008 Miss. App. LEXIS 186 (Miss. Ct. App. 2008).

Where appellant was sentenced upon his guilty pleas to the sale of a controlled substance and to conspiracy to commit capital murder, the trial court did not err by denying his post-conviction petition without conducting an evidentiary hearing because appellant failed to show that he was entitled to post-conviction relief. During the plea colloquy, appellant was informed of the charges, the effect of the plea, what rights he would waive if he pleaded guilty, and the possible sentence he could receive; appellant indicated that he understood everything, that he was satisfied with his attorney, and that he entered into the guilty plea of his own free will. Davis v. State, 973 So. 2d 1040, 2008 Miss. App. LEXIS 66 (Miss. Ct. App. 2008).

Appellant inmate's motion for post-conviction relief was denied without an evidentiary hearing where his assertions were substantially contradicted by the court record. Jenkins v. State, 986 So. 2d 1031, 2008 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 369 (Miss. 2008).

Even though a public defender failed to prepare for a murder case until after an indictment, appellant inmate's request for post-conviction relief based on ineffectiveness of counsel was denied because there was no prejudice shown since the inmate confessed twice to killing the victim. Moreover, the inmate did not show how retained counsel's failure to conduct independent investigation of the evidence and failure to interview witnesses prejudiced the result in this case; at any rate, he stated that he was satisfied with her services during the plea hearing. Jenkins v. State, 986 So. 2d 1031, 2008 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 369 (Miss. 2008).

Motion for post-conviction relief was properly denied because appellant inmate's guilty plea to manslaughter under Miss. Unif. Cir. & County Ct. Prac. R. 8.04 negated any claim of newly discovered evidence. Jenkins v. State, 986 So. 2d 1031, 2008 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 369 (Miss. 2008).

Motion for post-conviction relief was properly denied because appellant inmate's guilty plea to manslaughter under Miss. Unif. Cir. & County Ct. Prac. R. 8.04 was voluntary in nature where he testified that he was guilty, he was satisfied with his attorney, and that he understood the charges against him. Moreover, the entry of a voluntary plea waived speedy trial and confession-related issues. Jenkins v. State, 986 So. 2d 1031, 2008 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 369 (Miss. 2008).

Post-conviction relief was denied in a case where appellant inmate entered a guilty plea to three counts of selling cocaine because the imposition of three consecutive five-year sentences did not amount to cruel and unusual punishment. The sentence was within the guidelines in Miss. Code Ann. § 41-29-139, and there was no evidence of excessiveness under the facts of the case. Ramsey v. State, 973 So. 2d 294, 2008 Miss. App. LEXIS 28 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a drug case because appellant inmate failed to show that he was denied bail for an unreasonable time after his arrest; moreover, a person who had been indicted by a grand jury had no right to an initial appearance or a preliminary hearing. Ramsey v. State, 973 So. 2d 294, 2008 Miss. App. LEXIS 28 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a drug case where appellant inmate offered no evidence, other than his own statements, to prove that counsel was ineffective; moreover, he did not meet the second prong of the test in Strickland v. Washington, 466 U.S. 668 (1984), since he did not show that he would not have entered a guilty plea if counsel had informed him of the felony charges against the State's witnesses. In addition, the inmate had stated during the plea process that he was satisfied with his attorney. Ramsey v. State, 973 So. 2d 294, 2008 Miss. App. LEXIS 28 (Miss. Ct. App. 2008).

Post-conviction relief was denied since guilty pleas entered to three counts of selling cocaine were voluntary in nature under Miss. Unif. Cir. & County Ct. Prac. R. 8.04; appellant inmate made a sworn statement that he was mentally competent, he stated he was not under the influence, he waived his rights, and he admitted guilt. Ramsey v. State, 973 So. 2d 294, 2008 Miss. App. LEXIS 28 (Miss. Ct. App. 2008).

Appellate court overruled defendant's assertion that the trial court erred in dismissing his motion for post-conviction relief without ordering an evidentiary hearing, because defendant alleged no facts which would warrant an evidentiary hearing, when defendant argued that his attorney coerced him into stating at his plea hearing that he understood his sentence and was satisfied with his attorney's representation and alleged that his attorney conspired with the assistant district attorney and a narcotics agent in coercing him to plead guilty, and no evidence of this activity appeared in the record besides defendant's allegations. Trice v. State, 992 So. 2d 638, 2007 Miss. App. LEXIS 841 (Miss. Ct. App. 2007), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 538 (Miss. 2008).

Defendant's request for post-conviction relief was denied as the circuit court did not err in holding that defendant adequately waived his right to conflict-free counsel and, under the Sixth Amendment, defendant did not show that, but for his attorney's performance, the trial would have ended in a different result as counsel's conduct was not ineffective. Dupuis v. State, 972 So. 2d 7, 2007 Miss. App. LEXIS 782 (Miss. Ct. App. 2007), cert. dismissed, 166 So. 3d 23, 2012 Miss. LEXIS 651 (Miss. 2012).

Inmate was not entitled to post-conviction relief on his claim that execution by lethal injection amounted to an unconstitutional prior restraint of speech because the issue was capable of being raised at trial or on direct appeal and was procedurally barred from further consideration on collateral appeal. Notwithstanding the procedural bar, the claim was without merit, as the inmate provided no sworn testimony or affidavit to support his contention that the lethal-injection protocol would not be effective on him or that it would otherwise be improperly administered. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Inmate was not entitled to post-conviction relief on his claim that his counsel was ineffective for failing to challenge execution by lethal injection in the trial court because even if counsel was deficient for failing to do so, the inmate could not show that the outcome would have been different, as to date there had been no successful challenge to Mississippi's method of execution. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Inmate was not entitled to post-conviction relief on his claim that at least four jurors considered his silence at trial as indicative of guilt because the affidavit of the inmate's private investigator amounted to nothing more than hearsay. Even if one of the jurors had provided his or her own affidavit, it would not have been admissible under Miss. R. Evid. 606(b). Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

On the inmate's petition for post-conviction relief, the court held that counsel was not ineffective for failing to object to alleged instances of prosecutorial misconduct because the court had previously determined that the inmate was not prejudiced by the prosecutor's send-a-message argument. In addition, even if counsel was ineffective for not objecting to the prosecutor's comment that if the jury did not vote for death the inmate would have to be supported in jail with tax dollars, the natural and probable effect of the argument was not to create an unjust prejudice against the inmate resulting in a decision influenced by that prejudice. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

On the inmate's petition for post-conviction relief, the court held that counsel was not ineffective for failing to give an opening statement because opening statements were not mandatory under Miss. Code Ann. § 11-7-147. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

On the inmate's petition for post-conviction relief, the court held that counsel was not ineffective for allegedly failing to conduct any investigation for the guilt phase of the trial because counsel had a strategy for the case, which indicated that counsel had consulted with the inmate prior to trial in formulating a defense. In addition, the transcript revealed that counsel were fully prepared for cross-examination of the State's witnesses and were able to question them about details not brought out on direct examination. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

On the inmate's petition for post-conviction relief, the court held that counsel was not ineffective for failing to present evidence of mental impairment as a mitigating factor during the penalty phase because counsel sought a mental evaluation of defendant and attempted to acquire additional testing, but the mental evaluation revealed that the inmate was malingering. This description of the inmate, if used by the State to rebut the inmate's claims of mental problems, could have been damaging in the eyes of the jury, and therefore the decision not to use the evaluation was presumed to be strategic. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Inmate was not entitled to post-conviction relief on his claim that he was mentally retarded and therefore constitutionally protected from execution because his forensic psychologist did not state in his affidavit whether or not the inmate was malingering, as other medical reports evidenced defendant's history of malingering. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Appellant's conviction for DUI manslaughter and two counts of DUI mayhem in violation of Miss. Code Ann. § 63-11-30 did not subject him to double jeopardy. Each of the counts were predicated upon separate felonies, one instance of manslaughter and two instances of mutilation or mayhem that appellant committed as a result of his drunk driving; appellant was not entitled to post-conviction relief based on his double jeopardy claim. Moreno v. State, 967 So. 2d 701, 2007 Miss. App. LEXIS 739 (Miss. Ct. App. 2007).

When appellant pleaded guilty to DUI manslaughter and two counts of DUI mayhem, he represented to the court that he was satisfied with counsel's representation; he was not entitled to post-conviction relief based on his claim that counsel was ineffective for failing to assist him in receiving a speedy trial and failing to advise him regarding the maximum and minimum sentences. Appellant failed to present any facts supportive of a speedy trial violation; and he was advised, on the record, of the minimum and maximum sentence. Moreno v. State, 967 So. 2d 701, 2007 Miss. App. LEXIS 739 (Miss. Ct. App. 2007).

Post-conviction relief was properly denied in a drug case on the issues of the legality of a search and the sufficiency of the evidence because the entry of a guilty plea meant that these issues were procedurally barred. Ealey v. State, 967 So. 2d

685, 2007 Miss. App. LEXIS 733 (Miss. Ct. App. 2007).

In a case where defendant entered a guilty plea to possession of cocaine, post-conviction relief based on ineffective assistance of counsel was denied because there was nothing to support this other than defendant's own bare assertions; moreover, the record did not demonstrate that defendant was coerced into pleading guilty. Ealey v. State, 967 So. 2d 685, 2007 Miss. App. LEXIS 733 (Miss. Ct. App. 2007).

Post-conviction relief was properly denied where defendant entered a guilty plea to possession of cocaine because there was a factual basis for his plea under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3) based on the plea itself and the testimony of an officer about drugs, cash, and other items found in a car where defendant was a passenger. The fact that defendant was riding in a rental car and crossing state lines was enough to show that he had dominion and control over the items. Ealey v. State, 967 So. 2d 685, 2007 Miss. App. LEXIS 733 (Miss. Ct. App. 2007).

Where appellant was convicted of sexual battery and fondling, trial counsel was not ineffective for failing to call a medical professional to testify that a bicycle accident caused the victim's injury, and there was no indication that the defendant's trial would have ended with a different result had expert testimony been presented. The trial court did not err when it dismissed appellant's petition for post-conviction relief. Sharp v. State, 979 So. 2d 713, 2007 Miss. App. LEXIS 724 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 163 (Miss. 2008).

Motion for post-conviction relief was properly summarily denied in a case where defendant entered a guilty plea to a drug charge because there was no showing of ineffective assistance of counsel where defense counsel fulfilled his duty by advising defendant to plead guilty after viewing a tape of the drug transaction; moreover, defendant was unable to show that the outcome would have been different if counsel had investigated and found out that defendant had a prior felony conviction. Middlebrook v. State, 964 So. 2d 638, 2007 Miss. App. LEXIS 602 (Miss. Ct. App. 2007).

In an armed robbery case, there was a sufficient factual basis for the plea under Miss. Unif. Cir. & County Ct. Prac. R. 8.04 based on a specific indictment that alleged that defendant and his associate took property from persons at a bank, and they were in fear of immediate injury due to the exhibition of deadly weapons; after a reading of the indictment during the plea hearing, defendant stated that he committed the crime. Robinson v. State, 964 So. 2d 609, 2007 Miss. App. LEXIS 607 (Miss. Ct. App. 2007).

Post-conviction relief was properly denied in an armed robbery case because a trial court correctly stated that, due to the nature of the charges, defendant was not eligible for parole, and he had to serve his entire 30 year sentence; defendant was not eligible under Miss. Code Ann. § 47-5-139 until the mandatory portion of his sentence had been served. Robinson v. State, 964 So. 2d 609, 2007 Miss. App. LEXIS 607 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly summarily denied in a case where defendant entered a guilty plea to a drug charge because that effectively waived certain issues that could have been raised at trial. Middlebrook v. State, 964 So. 2d 638, 2007 Miss. App. LEXIS 602 (Miss. Ct. App. 2007).

In an armed robbery case, a motion for post-conviction relief was properly denied because defendant's plea was not involuntary or coerced in violation Miss. Unif. Cir. & County Ct. Prac. R. 8.04 merely because counsel advised defendant to plead guilty or because defendant feared that he would get a life sentence under Miss. Code Ann. § 97-3-79. Robinson v. State, 964 So. 2d 609, 2007 Miss. App. LEXIS 607 (Miss. Ct. App. 2007).

In an armed robbery case, defendant failed to show that he received ineffective assistance of counsel under the Sixth Amendment based on an argument that he was not informed of the consequences of his plea because defendant proceeded with the plea after an explanation was given by a trial court; moreover, an argument based on a failure to investigate was rejected because defendant failed to show what the investigation would have revealed, and the evidence certainly did not show that he was merely an accessory after the fact. Robinson v. State, 964 So. 2d 609, 2007 Miss. App. LEXIS 607 (Miss. Ct. App. 2007).

Trial court properly denied defendant's motion for post-conviction relief where he was precluded from the relitigation of the issues the appellate court had previously addressed; due to collateral estoppel, defendant was denied post-conviction relief as to the conviction of sexual battery against two of the victims. Caldwell v. State, 964 So. 2d 568, 2007 Miss. App. LEXIS 554 (Miss. Ct. App. 2007).

Appellant convicted of selling methamphetamine based on a guilty plea was not entitled to post-conviction relief; appellant failed to prove that the appellant's indictment or plea were invalid, that appellant received ineffective assistance of counsel, or that state officials and appellant's counsel were co-conspirators in coercing appellant to enter a guilty plea. Carroll v. State, 963 So. 2d 44, 2007 Miss. App. LEXIS 532 (Miss. Ct. App. 2007).

Post-conviction relief was properly denied where: (1) trial counsel did not err in failing to seek a change of venue because of pretrial publicity; (2) petitioner's culpability as a capital murder accomplice would not be reduced by testimony of a clinical psychologist who opined that petitioner was not by nature a violent person; (3) although the aggravating circumstances which invoked the death penalty were not charged in the indictment, the fact that the capital murder statute listed the possible aggravating circumstances refuted the contention that petitioner had inadequate notice; (4) because the record supported no findings of error, there could be no prejudicial cumulative error; (5) use of the underlying felony as an aggravating sentencing factor did not constitute impermissible double prejudice; and (6) other issues raised on direct appeal could not be considered on collateral appeal under Miss. Code Ann. § 99-39-21. Thong Le v. State, 967 So. 2d 627, 2007 Miss. LEXIS 452 (Miss. 2007), cert. denied, 552 U.S. 1300, 128 S. Ct. 1747, 170 L. Ed. 2d 547, 2008 U.S. LEXIS 2913 (U.S. 2008).

Motion for post-conviction relief was denied in a case where probation was revoked because a nolo contendere plea was voluntary under Miss. Unif. Cir. & Cty. R. 8.04(A)(3) since defendant knew the consequences of his plea; he gave contradictory statements regarding his knowledge of the terms of probation and whether the terms would have affected his decision to plead guilty. Welch v. State, 958 So. 2d 1288, 2007 Miss. App. LEXIS 434 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 21 (Miss. 2008).

Motion for post-conviction relief was denied in a case where probation was revoked because a nolo contendere plea was entered; therefore, defendant waived his right to argue that the evidence was insufficient to convict him and that he was innocent. Welch v. State, 958 So. 2d 1288, 2007 Miss. App. LEXIS 434 (Miss. Ct. App. 2007), cert. dismissed, 973 So. 2d 244, 2008 Miss. LEXIS 21 (Miss. 2008).

Post-conviction relief was denied in a case where a plea was entered to burglary of a dwelling under Miss. Code Ann. § 97-17-23 because the record showed that defendant was indicted for this charge; all charges were contained in the same indictment and all offenses were part of a related series of events. Robertson v. State, 959 So. 2d 597, 2007 Miss. App. LEXIS 452 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant entered a guilty plea to the charge of uttering a forgery because a felony sentence was properly imposed under a trial court's discretion where defendant had one indictment retired to the file, and she owed restitution on a charge in another county. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied on the basis that a plea was involuntary because this issue was not preserved for review; notwithstanding the bar, defendant agreed to the recommendation of the prosecution, which was exactly the sentence that he received, and the fact that a suspended sentence was later revoked did not render the plea involuntary. Ausbon v. State, 959 So. 2d 592, 2007 Miss. App. LEXIS 441 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied on the basis that counsel was deficient because this issue was not preserved for review; notwithstanding the bar, defendant expressed satisfaction with counsel during a plea colloquy based on counsel's work to secure a recommendation for a suspended sentence, and defendant's own misconduct resulted in incarceration when the suspended sentence was later revoked. Ausbon v. State, 959 So. 2d 592, 2007 Miss. App. LEXIS 441 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied on the basis that an indictment was flawed because this issue was not preserved for review; notwithstanding the bar, the issue was meritless because the indictment stated that a crime occurred "at a certain dwelling owned and occupied," which was sufficient to reflect a burglary of an occupied dwelling, and the transcript of the guilty plea showed that defendant was pleading guilty to this crime, and that he knowing, understandingly, freely, and voluntarily entered a plea to such. Ausbon v. State, 959 So. 2d 592, 2007 Miss. App. LEXIS 441 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly dismissed without an evidentiary hearing in a case where a guilty plea was entered to the charge of burglary of an occupied dwelling because defendant offered no proof of what advice he was given about parole, other than the assertions made in the motion, and he was not eligible for such due to his conviction; also, defendant was told by a trial court that he was required to serve the full term of his sentence when he entered a guilty plea. Edge v. State, 962 So. 2d 81, 2007 Miss. App. LEXIS 461 (Miss. Ct. App. 2007).

Motion for post-conviction relief was denied in a case where defendant sought a clarification of a sentence because, even though he might not have been entitled to a suspended sentence due to his status as a convicted felon, there was no prejudice since he benefitted from this lenient sentence; moreover, since post-release supervision did not count as part of the sentence, the trial court did not exceed the original 20-year sentence by ordering defendant to serve 12 years in custody with eight years suspended. Ausbon v. State, 959 So. 2d 592, 2007 Miss. App. LEXIS 441 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly summarily dismissed because defendant failed to show that his original counsel rendered ineffective assistance of counsel by transferring the case due to either a lack of experience or personal reasons; moreover, advice that was given to the family was not ineffective since defendant was told to plead not guilty. Edge v. State, 962 So. 2d 81, 2007 Miss. App. LEXIS 461 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly dismissed based on an allegation of ineffective assistance of counsel because defendant was correctly informed of the 10-year maximum penalty for uttering forgery; however, the case was remanded for resentencing because plain error was committed when a trial court improperly imposed a 15-year sentence. Jefferson v. State, 958 So. 2d 1276, 2007 Miss. App. LEXIS 440 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly dismissed based on an allegation that an illegal sentence of house arrest was imposed under Miss. Code Ann. § 47-5-1003 due to defendant's prior convictions because defendant had benefitted from any error. Jefferson v. State, 958 So. 2d 1276, 2007 Miss. App. LEXIS 440 (Miss. Ct. App. 2007).

Petition for post-conviction relief was denied because a plea was not involuntarily entered due to the fact that it was open in nature; defendant was advised of the nature of the charges, and his signed and sworn guilty plea petition indicated that the plea would be open. Moody v. State, 964 So. 2d 564, 2007 Miss. App. LEXIS 429 (Miss. Ct. App. 2007).

Petition for post-conviction relief was denied because there was no error in the mention of the conspiracy charges during sentencing when the state requested their retirement to the file; there was no indication that the conspiracy charges, which were not included in a pre-sentence report, were considered as aggravating factors. Moody v. State, 964 So. 2d 564, 2007 Miss. App. LEXIS 429 (Miss. Ct. App. 2007).

Petition for post-conviction relief was denied because there was no Eighth

Amendment violation based on a 14-year sentence given for a violation of Miss. Code Ann. § 41-29-139 where the maximum sentence was 30 years; there was no inferences of a grossly disproportionate sentence when defendant's sentence was compared to the crime that he committed, and the factors in Solem v. Helm, 463 U.S. 277 (1983), were not considered because no evidence was presented to require such. Moody v. State, 964 So. 2d 564, 2007 Miss. App. LEXIS 429 (Miss. Ct. App. 2007).

Inmate was not entitled to post-conviction relief on the ground that the indictment was defective because the indictment charged the inmate with knowingly and intentionally selling cocaine in violation of Miss. Code Ann. § 41-29-139, which was sufficient to notify the inmate that the inmate was charged with the crime of knowingly and intentionally selling a Schedule II controlled substance under § 41-29-139(a)(1) and that the inmate could be sentenced under § 41-29-139(b)(1). Stepp v. State, 958 So. 2d 257, 2007 Miss. App. LEXIS 368 (Miss. Ct. App. 2007).

Motion for post-conviction relief was summarily dismissed since defendant, who was 65 years old and had no prior record, was unable to show that his sentences for burglary and aggravated assault, which were within the ranges in Miss. Code Ann. § 97-17-23 and Miss. Code Ann. § 97-3-7 were grossly disproportionate; he could have received 45 years if the maximum terms had been run consecutively, and the facts showed that he broke into a house wielding a pistol and beat a victim. Denton v. State, 955 So. 2d 398, 2007 Miss. App. LEXIS 283 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly denied in a case where defendant pled guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139(a) since his 20-year sentence was not illegal; because he was a habitual offender, defendant should have actually received a mandatory 30-year sentence. Rucker v. State, 955 So. 2d 958, 2007 Miss. App. LEXIS 284 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant entered a guilty plea to the sale of cocaine because he failed to request a bifurcated hearing on his habitual offender status; even if the error had been preserved, a hearing was not required because he entered a guilty plea to the principal charge. Rucker v. State, 955 So. 2d 958, 2007 Miss. App. LEXIS 284 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant entered a guilty plea to the sale of cocaine because he was unable to show that counsel acted deficiently in the context of a plea when defendant received the exact sentence that he bargained for. Rucker v. State, 955 So. 2d 958, 2007 Miss. App. LEXIS 284 (Miss. Ct. App. 2007).

Where appellant pled guilty to manslaughter and armed robbery, counsel filed a motion for post-conviction relief alleging that the indictment was defective; the trial court denied the motion, finding that appellant waived the objection to the indictment by pleading guilty, and appellant's successive motions for post-conviction relief were properly denied. Runnels v. State, 957 So. 2d 424, 2007 Miss. App. LEXIS 332 (Miss. Ct. App. 2007).

Where only one mention was made of defendant's prior mental illness, a trial court did not err by failing to provide a competency hearing during sentencing since one was not required; defendant stated he was able to understand his plea given during sentencing, defendant's attorney stated that defendant was able to proceed, and the trial court had an opportunity to observe defendant during a two-day trial. Nichols v. State, 955 So. 2d 962, 2007 Miss. App. LEXIS 279 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly denied in a case where defendant contended that a plea was involuntarily given due to diminished mental capacity; defendant stated that he understood the charges against him and the consequences of a plea under Miss. Unif. Cir. & Cty. R. 8.04(A)(4)(b), and moreover defense counsel stated that it was his opinion that defendant was able to enter into the plea. Nichols v. State, 955 So. 2d 962, 2007 Miss. App. LEXIS 279 (Miss. Ct. App. 2007).

Where the trial court denied appellant's first motion for post-conviction relief from judgments convicting him on pleas of guilty to manslaughter and armed robbery, appellant was not entitled to relief under Miss. R. Civ. P. 60(b) based on a claim that he did not authorize counsel to file the motion and he should be able to submit a pro se motion for post-conviction relief; appellant was denied relief under Rule 60(b), because he showed no exceptional circumstances. Runnels v. State, 957 So. 2d 424, 2007 Miss. App. LEXIS 332 (Miss. Ct. App. 2007).

Motion for post-conviction relief was denied based on an allegation of ineffective assistance of counsel under the Sixth Amendment because defense counsel did not act deficiently in failing to request a competency hearing where there was no evidence that one was warranted during trial, a plea hearing, or at sentencing. Nichols v. State, 955 So. 2d 962, 2007 Miss. App. LEXIS 279 (Miss. Ct. App. 2007).

Motion for post-conviction relief was denied based on an amended indictment in an aggravated assault case because the failure to include the phrase "thereby manifesting extreme indifference to the value of human life" was not erroneous since this was not an element of the crime; moreover, all of the requirements for indictments under Miss. Unif. Cir. & Cty. R. 7.06 were met. Nichols v. State, 955 So. 2d 962, 2007 Miss. App. LEXIS 279 (Miss. Ct. App. 2007).

Where appellant pled guilty to the manufacture of methamphetamine, he was sentenced to 22 years as permitted by Miss. Code Ann. § 41-29-139(b)(1); the post-conviction court found that the sentence was not disproportionate to the crime and correctly dismissed his petition without a hearing. Sellars v. State, 963 So. 2d 1183, 2007 Miss. App. LEXIS 254 (Miss. Ct. App. 2007).

Motion for post-conviction relief was denied in a case where defendant's suspended sentence for statutory rape was revoked because he waived issues relating to a speedy trial and defects in an evidence sample due to a guilty plea, there was no evidence that an indictment was manufactured, and the revocation of the suspended sentence was permitted under Miss. Code Ann. §§ 47-7-34 and 47-7-37 where defendant had already served a portion of a five-year sentence after the guilty plea was entered. Davis v. State, 954 So. 2d 530, 2007 Miss. App. LEXIS 259 (Miss. Ct. App. 2007).

Where appellant claimed that appellant suffered from untreated mental disorders, the post-conviction court found that appellant's plea of guilty to two counts of aggravated assault was voluntary and intelligent; the trial judge determined that appellant was competent to enter a guilty plea, and appellant told the trial court several times that appellant wished to plead guilty. Cross v. State, 954 So. 2d 497, 2007 Miss. App. LEXIS 246 (Miss. Ct. App. 2007).

Denial of defendant's petition for post-conviction relief was affirmed where his plea was entered into voluntarily as he was informed of the charge, the effect of the plea, the rights he would waive, and possible sentence; under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3), there was a factual basis to accept plea and defendant failed to support his ineffective assistance of counsel claims and was not deprived of speedy trial. Turner v. State, 961 So. 2d 734, 2007 Miss. App. LEXIS 200 (Miss. Ct. App.), cert. dismissed, 968 So. 2d 948, 2007 Miss. LEXIS 627 (Miss. 2007).

Post-conviction relief was denied where there was a factual basis for a plea to sexual battery under Miss. Code Ann. § 97-3-95(1)(a), (d); defendant confessed to police that he penetrated a 13-year-old when he was 25, the victim stated that she was the victim of forcible intercourse, and the medical evidence showed that she had been vaginally penetrated. Parkman v. State, 953 So. 2d 315, 2007 Miss. App. LEXIS 202 (Miss. Ct. App. 2007).

Where a guilty plea was entered in a sexual battery case, there was no way to later challenge based on an allegation that a confession was involuntary since the right to do so was waived by the entry of the plea; therefore, post-conviction relief was properly denied on this ground. Parkman v. State, 953 So. 2d 315, 2007 Miss. App. LEXIS 202 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where a guilty plea was entered to the charge of sexual battery because there was no ineffective assistance of counsel; defendant indicated at his plea hearing that he was satisfied with the attorney's investigation of the case, the attorney was not deficient in advising defendant that he would probably not prevail at trial due to the confession, defendant never told the attorney that there was anything wrong with the confession, and the attorney was not deficient for failing to file an appeal since this right was waived by the guilty plea. Parkman v. State, 953 So. 2d 315, 2007 Miss. App. LEXIS 202 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where a portion of a suspended sentence was revoked under Miss. Code Ann. § 47-7-37 because there was no due process violation since the evidence relied upon was listed, there was no double jeopardy violation since the original sentence was reinstated, and counsel was not required since the case was not complex. Pruitt v. State, 953 So. 2d 302, 2007 Miss. App. LEXIS 203 (Miss. Ct. App. 2007).

Post-conviction relief was summarily denied in a case where defendant entered a guilty plea to the sale of cocaine under Miss. Code Ann. § 41-29-139 because the record and his sworn statements at the plea colloquy contradicted his later claim that the plea was not entered knowingly, voluntarily, and intelligently. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

In a case where defendant entered a guilty plea to the sale of cocaine, post-conviction relief was properly denied because an indictment was not ineffective based on a failure to include the amount of drugs sold; this was not an essential element of the crime. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

In a case where defendant pled guilty to the sale of cocaine, post-conviction relief was denied because he did not show that he received ineffective assistance of counsel, as defense counsel properly informed defendant that he could have received the death penalty if he did not take the plea offer; moreover, even if defendant showed that the first prong of the ineffective assistance of counsel test was met, he did not allege that any imagined deficiency caused him prejudice. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

Post-conviction relief was denied in a case where defendant entered a guilty plea to the crime of the sale of cocaine because an indictment was not void due to the fact that it was returned during a July term, but filed during a November term, since this was not prohibited under Miss. Code Ann. § 13-5-39; the grand jury continued to serve from term to term until the next grand jury was impaneled, and it was allowed to return indictments at any term of court. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

Where a hunting cabin was fully furnished and had food items, cooking supplies, appliances, and other living comforts and necessities, it constituted a dwelling under Miss. Code Ann. § 97-17-23; therefore, post-conviction relief was denied because defendant was properly charged with burglary of a dwelling, and no evidence was presented by the owners of such due to the fact that defendant entered a guilty plea. Young v. State, 952 So. 2d 1031, 2007 Miss. App. LEXIS 183 (Miss. Ct. App. 2007).

Motion for post-conviction relief was denied in a case where defendant entered a guilty plea to the charge of burglary of a dwelling because there was no ineffective assistance of counsel shown; defendant stated that he was not forced to give the plea, he indicated that he was satisfied with counsel's performance, and there was nothing to show that defendant was surprised by the plea proceedings, despite having a short amount of time to make a decision regarding the plea offer. Young v. State, 952 So. 2d 1031, 2007 Miss. App. LEXIS 183 (Miss. Ct. App. 2007).

Post-conviction relief was denied based on a venue challenge because at least part of the offense of statutory rape occurred in a county where defendant picked his victim up before having intercourse in another county, pursuant to Miss. Code Ann. § 99-11-19; moreover, defendant chose to enter a plea after being informed of a discrepancy. Plummer v. State, 966 So. 2d 186, 2007 Miss. App. LEXIS 166 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was properly denied because his plea was voluntarily and intelligently given in a grand larceny case where the trial court asked him several questions regarding his understanding of the plea, its consequences, and the charges; moreover, there was no reason to consult his mother first where defendant was represented by an attorney, and he was 24 years old with an 11th grade education. Adams v. State, 950 So. 2d 259, 2007 Miss. App. LEXIS 116 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was properly denied because he did not receive ineffective assistance of counsel during a guilty plea; there was no duty to investigate for defects in a proper indictment where no error was found in the fact that the instrument bore a grand jury date preceding the indictment's filing date, defendant did not give an adequate argument regarding which rights the attorney failed to advise him of, and it was merely trial strategy to fail to object to a statement from the victim's family at sentencing. Adams v. State, 950 So. 2d 259, 2007 Miss. App. LEXIS 116 (Miss. Ct. App. 2007).

Post-conviction relief was denied because defendant was unable to show that she received ineffective assistance of counsel in entering a guilty plea; an allegation that the attorney did not explain the charges or possible sentences adequately contradicted the sworn statements defendant gave during a guilty plea. Jones v. State, 948 So. 2d 499, 2007 Miss. App. LEXIS 50 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant contended that a plea was not voluntary because this claim was contradicted by her statements at the plea hearing, and defendant acknowledged that she was waiving certain rights; moreover, she stated that she had been informed of the minimum and maximum sentences applicable to her case, pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(4)(b). Jones v. State, 948 So. 2d 499, 2007 Miss. App. LEXIS 50 (Miss. Ct. App. 2007).

Post-conviction relief was denied based on a claim that a circuit court lacked jurisdiction over a guilty plea based on the alleged price of stolen items in a larceny case because the circuit court had original jurisdiction over all matters civil and criminal; moreover, defendant was unable to litigate her actual guilt on appeal from a denial of post-conviction relief. Jones v. State, 948 So. 2d 499, 2007 Miss. App. LEXIS 50 (Miss. Ct. App. 2007).

Because defendants entered voluntary and intelligent guilty pleas to armed robbery, they waived the right to challenge the voluntariness of their confessions to such under the U.S. Constitution and Miss. Const. Art. 3, §§ 14 and 26; therefore, their motions for post-conviction relief were denied. Holland v. State, 956 So. 2d 322, 2007 Miss. App. LEXIS 56 (Miss. Ct. App. 2007).

Denial of the inmate's petition for post-conviction relief pursuant to Miss. Code Ann. §§ 99-39-1 et seq. was appropriate because he failed to show that his attorneys were ineffective in part for requesting that venue be transferred; any prejudice claimed by the inmate was purely hypothetical and was insufficient to demonstrate any ineffectiveness. Turner v. State, 953 So. 2d 1063, 2007 Miss. LEXIS 2 (Miss. 2007).

Defendant was not entitled to post-conviction relief based on ineffective assistance when res judicata barred some of the claims such as counsel's failure to support a motion to suppress defendant's confession, counsel's failure to properly advise on plea bargains, counsel's failure to introduce victims' impact statement, and failure to properly prepare defendant to give his testimony. Hodges v. State, 949 So. 2d 706, 2006 Miss. LEXIS 692 (Miss. 2006), cert. denied, 552 U.S. 1061, 128 S. Ct. 705, 169 L. Ed. 2d 552, 2007 U.S. LEXIS 12873 (U.S. 2007).

Appellate court affirmed the denial of the inmate's motion for post-conviction relief as the inmate acknowledged that recommended post-release supervision would be five years, and Miss. Code Ann. § 47-7-34 authorized post-release supervision of up to five years. Elliott v. State, 924 So. 2d 609, 2006 Miss. App. LEXIS 174 (Miss. Ct. App. 2006).

Court denied defendant's petition for post-conviction relief after defendant was convicted of capital murder and sentenced to death when res judicata under Miss. Code Ann. § 99-39-21(3) barred the claims about prosecutorial misconduct, evidentiary rulings like the admission of prior bad acts, jury instructions, and ineffective counsel that were raised in defendant's direct appeal. Hodges v. State, 949 So. 2d 706, 2006 Miss. LEXIS 692 (Miss. 2006), cert. denied, 552 U.S. 1061, 128 S. Ct. 705, 169 L. Ed. 2d 552, 2007 U.S. LEXIS 12873 (U.S. 2007).

Trial court properly dismissed defendant's motion for post-conviction relief where he was not subjected to double jeopardy by being convicted of three criminal offenses arising out of a single incident; a criminal defendant could be convicted of more than one offense that arose out of a single event where each offense required proof of a different element. Ward v. State, 944 So. 2d 908, 2006 Miss. App. LEXIS 860 (Miss. Ct. App. 2006).

Defendant's motion for post-conviction relief was properly denied where he failed to provide sufficient evidence demonstrating his attorney's deficiency; defendant admitted in his brief that he could not name the witness that counsel should have interviewed, nor did he disclose the "mitigating information" that counsel allegedly failed to uncover. Jones v. State, 956 So. 2d 310, 2006 Miss. App. LEXIS 871 (Miss. Ct. App. 2006).

Defendant did not show ineffective assistance of counsel where defendant failed to point out anything counsel could have done other than proceed to trial on a theory that a witness may have committed the crimes because he turned in some of the items taken in the robbery; indigent defendants were not entitled to appointed counsel of their choice. Anderson v. State, 943 So. 2d 102, 2006 Miss. App. LEXIS 858 (Miss. Ct. App. 2006).

Appellant convicted of possession of cocaine with intent to deliver and sentenced to 30 years as a habitual offender without parole was not entitled to post-conviction relief; his sentence was not illegal, he was not denied counsel at a revocation hearing, and his ineffective assistance of counsel claim from 1983 was time-barred by Miss. Code Ann. § 99-39-5(2). Sanders v. State, 942 So. 2d 298, 2006 Miss. App. LEXIS 853 (Miss. Ct. App. 2006).

Appellant sentenced to 30 years in custody upon his plea of guilty to the sale of cocaine was not entitled to post-conviction relief, and there was a factual basis to support the plea and the sentence was within the appropriate range; the sentencing judge was permitted to consider a letter from the sheriff explaining defendant's escape on new criminal charges and the police chase that caused personal injuries and damages. Vaughn v. State, 964 So. 2d 509, 2006 Miss. App. LEXIS 845 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 389 (Miss. 2007).

Indictment charging appellant with selling of cocaine was not required to allege the weight of the controlled substance, because it was not an element of the crime defined in Miss. Code Ann. § 41-29-139(a)(1); there was no merit to appellant's claim that counsel was ineffective because of flaws in the indictment, and he was not entitled to post-conviction relief. Hammond v. State, 938 So. 2d 375, 2006 Miss. App. LEXIS 690 (Miss. Ct. App. 2006).

Dismissal of an inmate's motion for post-conviction relief was affirmed as the trial judge's allocution with the inmate was sufficient to show that the inmate's plea was voluntary, and the inmate failed to establish that he was deprived of effective assistance of counsel. Brown v. State, 935 So. 2d 1122, 2006 Miss. App. LEXIS 563 (Miss. Ct. App. 2006).

Appellate court denied an inmate's motion for post-conviction relief because the inmate acknowledged at his plea hearing that his attorney was fully informed as to all of the facts and circumstances surrounding his case and that he was informed under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(4)(b) of the charge against him, the possible sentence and fine that could be imposed, and the rights he gave up by pleading guilty. Hill v. State, 935 So. 2d 416, 2006 Miss. App. LEXIS 546 (Miss. Ct. App.), cert. dismissed, 942 So. 2d 164, 2006 Miss. LEXIS 766 (Miss. 2006).

Where defendant entered a plea of guilty to murder as a habitual offender in 1980, he was sentenced to serve a term of life in custody. The court treated his 2004 motion to vacate judgment and sentence as a motion for post-conviction relief, and dismissed it as time-barred. Padgett v. State, 938 So. 2d 876, 2006 Miss. App. LEXIS 150 (Miss. Ct. App.), cert. denied, 937 So. 2d 450, 2006 Miss. LEXIS 603 (Miss. 2006).

Denial of post-conviction relief was affirmed because the petitioner's guilty plea was voluntarily and knowingly made, and the petitioner failed to establish ineffective assistance of counsel, as it was because of counsel's successful negotiations that the petitioner was able to initially receive a lenient sentence and eventually able to escape a possible life sentence. White v. State, 921 So. 2d 402, 2006 Miss. App. LEXIS 113 (Miss. Ct. App. 2006).

Appellate court held that it would not suspend the requirements of the Mississippi Rules of Appellate Procedure, as defendant failed to show any cause, much less good cause, as to the reason for his 10-year delay in seeking a direct appeal, and the trial court judge committed no error in denying defendant's motion for out-of-time appeal, as the judge had no discretion to allow an out-of-time appeal outside of 180 days from the entry of judgment; thus, the appellate court concluded that it did not find that justice demanded granting defendant an out-of-time appeal 10 years after his conviction. Parker v. State, 921 So. 2d 397, 2006 Miss. App. LEXIS 109 (Miss. Ct. App. 2006).

Trial court did not err by denying defendant post-conviction relief where although the victim recanted her trial testimony, on two occasions, that led to defendant's statutory rape conviction under Miss. Code Ann. § 97-3-65(1)(a), the trial court was able to assess her credibility firsthand and find that she had in fact had sex with defendant. Farrish v. State, 920 So. 2d 1066, 2006 Miss. App. LEXIS 107 (Miss. Ct. App. 2006).

Defendant's petition for post-conviction relief was denied where defendant's plea was entered voluntarily and intelligently; he expressly acknowledged his understanding of the Alford plea and its consequences while under oath; defendant answered affirmatively as to whether he understood charges against him, did not deny any charges as they were read, and he did not prove that counsel was ineffective. Cole v. State, 918 So. 2d 890, 2006 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. dismissed, 927 So. 2d 750, 2006 Miss. LEXIS 213 (Miss. 2006).

Defendant was properly denied post-conviction relief after he pled guilty to armed robbery because the trial court did not err in not disqualifying the assistant district attorney on the ground that he had served as defendant's court-appointed attorney prior to serving as assistant district attorney. Confidential information was not used in the prosecution of the case, and defendant was not denied fair trial. Vandergriff v. State, 920 So. 2d 486, 2006 Miss. App. LEXIS 50 (Miss. Ct. App. 2006).

Petitioner was properly denied post-conviction relief after he pled guilty to manslaughter by culpable negligence because the maximum sentence for the crime under Miss. Code Ann. § 63-11-30(4) was 25 years, and petitioner was only sentenced to 20 years in prison, with 14 years suspended. Petitioner failed to show good cause or prejudice. Oaks v. State, 912 So. 2d 1075, 2005 Miss. App. LEXIS 675 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction was proper under the Mississippi Uniform Post-Conviction Collateral Relief Act (PCR), Miss. Code Ann. §§ 99-39-1 et seq. because the holding that testimony pertaining to a witness's offer to take a polygraph was inadmissible at trial did not have retroactive application in the inmate's case. Manning v. State, 2005 Miss. LEXIS 464 (Miss. Aug. 4, 2005), op. withdrawn, sub. op., 929 So. 2d 885, 2006 Miss. LEXIS 109 (Miss. 2006).

During the plea hearing, defendant acknowledged that he was a participant in the armed robbery, and described the events of the robbery; the court modified the simple robbery petition to charge him with armed robbery and defendant made no objection to the change. Defendant was afforded the effective assistance of counsel and his plea was not involuntary; he was not entitled to post-conviction collateral relief. Baldwin v. State, 923 So. 2d 218, 2005 Miss. App. LEXIS 513 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 141 (Miss. 2006).

Where the same judge presided over appellant's first and second motion for post-conviction relief, appellant's claim that the judge should have recused himself was not raised below, and therefore could not be raised in the post-conviction appeal. Appellant was not entitled to relief. Hudson v. State, 932 So. 2d 842, 2005 Miss. App. LEXIS 864 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 509 (Miss. 2006).

Upon resentencing appellant for armed robbery, the trial court increased his sentence from fifteen years to twenty-two years; he was not entitled to post-conviction relief because there was no evidence of vindictiveness. Hudson v. State, 932 So. 2d 842, 2005 Miss. App. LEXIS 864 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 509 (Miss. 2006).

Defendant's motion for post-conviction relief was properly denied where defendant's guilty plea was valid and without error, and the trial judge's denial of counsel's motion for a continuance was proper, defendant was aware of the minimum and maximum allowable sentence, and defense counsel did not provide inadequate representation at resentencing. Greer v. State, 920 So. 2d 1039, 2005 Miss. App. LEXIS 856 (Miss. Ct. App. 2005), cert. dismissed, 933 So. 2d 303, 2006 Miss. LEXIS 307 (Miss. 2006).

Denial of an inmate's motion for post-conviction relief was affirmed; the inmate's arrest during house detention after an officer found money, scales, and residue of marijuana, did not violate Miss. Code Ann. § 47-5-1003 simply because the officer who found the drugs waited for a narcotics agent to arrive to conduct the arrest. Johnson v. State, 909 So. 2d 122, 2005 Miss. App. LEXIS 559 (Miss. Ct. App. 2005).

Per Miss. Code Ann. § 47-7-37, the circuit court had the statutory authority to revoke defendant's post-release supervision when he sold cocaine to an agent while on release. There was no error where the circuit court reinstated his five-year suspended sentence; further, per the bench warrant upon which defendant was arrested, and the summons setting the revocation hearing, hand delivered to defendant, he had notice of the revocation hearing and he was not denied due process or entitled to post-conviction relief. Rucker v. State, 909 So. 2d 137, 2005 Miss. App. LEXIS 551 (Miss. Ct. App. 2005).

Denial of defendant's petition for post-conviction relief was proper where, by pleading guilty, he waived his search and seizure claim, and defendant failed to show that he did not make a knowingly and intelligent plea; defendant noted at his plea hearing that he felt satisfied with his attorney; thus, there was no ineffective assistance of counsel. Pevey v. State, 914 So. 2d 1287, 2005 Miss. App. LEXIS 902 (Miss. Ct. App. 2005).

Defendant's motion for post-conviction relief was properly denied where the trial court did not revoke defendant's probation because, after defendant completed the Regimented Inmate Discipline program, he still had to be on supervised probation for the remainder of his original sentence and, because he was still on probation, the court could revoke it based on the violations presented. Bobo v. State, 914 So. 2d 767, 2005 Miss. App. LEXIS 791 (Miss. Ct. App. 2005).

Defendant was properly denied post-conviction relief because his counsel was not ineffective for allowing him to receive an illegal sentence for possession of cocaine where the sentence was corrected six months later and defendant suffered no prejudice. Defendant presented no evidence to show that counsel's objection to the imposed sentence would have changed the outcome. Black v. State, 919 So. 2d 1017, 2005 Miss. App. LEXIS 466 (Miss. Ct. App. 2005).

Trial court did not err by denying defendant's petition for post-conviction relief where she failed to cite appropriate legal authority in support of her issues, thereby procedurally barring the claims, and where there was no requirement that she receive a sentence proportionate to a sentence imposed on an accomplice. Young v. State, 919 So. 2d 1047, 2005 Miss. App. LEXIS 456 (Miss. Ct. App. 2005).

Where petitioner waived his right to a probation revocation hearing, the court had the right to re-impose petitioner's suspended sentence for uttering forgery because he had tested positive for marijuana and was terminated from a work program. While petitioner claimed that he did not understand that he would have to serve the remaining balance of his sentence, he was not entitled to post-conviction relief. Gates v. State, 919 So. 2d 170, 2005 Miss. App. LEXIS 375 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief was proper because, since no evidence accompanied the inmate's motion to contradict the trial court's findings when the guilty plea was entered, he was not entitled to an evidentiary hearing under the Uniform Post-Conviction Collateral Relief Act, Miss. Code Annotated §§ 99-39-1 through 99-39-29. Hardiman v. State, 904 So. 2d 1225, 2005 Miss. App. LEXIS 394 (Miss. Ct. App. 2005).

Defendant's two concurrent nine-year sentences and five years of post-release supervision were within the two combined statutory maximum sentences for aggravated assault and shooting into an occupied dwelling adding up to a 30-year maximum sentence; accordingly, the trial court did not commit manifest error in denying his motion for post-conviction relief. Richardson v. State, 907 So. 2d 404, 2005 Miss. App. LEXIS 422 (Miss. Ct. App. 2005).

In his post-conviction action, the record showed that at the plea hearing, defendant specifically announced that he was satisfied with the performance of his counsel. Therefore, it could not be stated that his attorney's performance was deficient, or that he was deprived of a fair trial; further, it was clear from that record that defendant knew the trial court was rejecting his original plea agreement, that he then entered his plea knowingly and voluntarily, and as such, he was not entitled to an evidentiary hearing. Reed v. State, 918 So. 2d 776, 2005 Miss. App. LEXIS 335 (Miss. Ct. App. 2005).

In his post-conviction action, petitioner was procedurally barred from attacking the undercover officer's out-of-court identification as insufficient to have proven his identity in the drug sale, because he never made an objection to same at the probation revocation hearing. Further, the record was clear that throughout her testimony, the undercover officer repeatedly made reference to "petitioner" as the individual from whom she purchased the drugs, and as petitioner had directed no questions towards the agent, her testimony remained unimpeached and the State met its burden of proving that petitioner "more likely than not" violated the terms of his probation. Metcalf v. State, 904 So. 2d 1222, 2004 Miss. App. LEXIS 1187 (Miss. Ct. App. 2004).

Plea agreement signed by defendant expressly addressed each of defendant's constitutional rights and it specifically addressed his right against self-incrimination. Defendant was asked in the plea agreement whether he understood that if he pled guilty, he would be waiving his constitutional right against self-incrimination and he answered, "yes"; although the better practice would have been for the trial judge to address defendant's right against self-incrimination specifically, failure to do so was not reversible error, and defendant's application for post-conviction relief was properly denied. Moore v. State, 906 So. 2d 793, 2004 Miss. App. LEXIS 1152 (Miss. Ct. App. 2004).

Where defendant admitted that he committed statutory rape and entered a plea of guilty to the offense, the court properly denied his motion for post-conviction relief. The record indicated that reasonable steps were undertaken to insure that defendant's plea was voluntary; and he failed to prove that he received the ineffective assistance of counsel during the plea proceedings. Carpenter v. State, 899 So. 2d 916, 2005 Miss. App. LEXIS 115 (Miss. Ct. App.), cert. denied, 898 So. 2d 679, 2005 Miss. LEXIS 274 (Miss. 2005).

Defendant claimed his sentence was illegal because the trial court was without authority, under Miss. Code Ann. § 47-7-3, to suspend any portion of sentence. However, one could not stand mute when receiving a favorable suspended sentence and later use same as a sword, he suffered no actual harm and he was not entitled to post-conviction relief. Further, it could not be said that plea counsel's brief moment of confusion, regarding which charges the State would pursue, rose to the level of ineffective assistance of counsel and the record clearly indicated that the trial judge explained to defendant the terms of the plea agreement. Sykes v. State, 895 So. 2d 191, 2005 Miss. App. LEXIS 150 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief was proper pursuant to the Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 et seq., where his due process rights were not violated because there was no need to accommodate the inmate in putting forth witnesses or evidence at a hearing prior to his revocation. Thomas v. State, 910 So. 2d 1147, 2005 Miss. App. LEXIS 228 (Miss. Ct. App. 2005).

Defendant asserted that under Miss. Code Ann. § 47-7-33 a priorly convicted felon could not be given a suspended sentence. However, that information did not appear in the indictment or the record, and in fact, he received a very favorable sentence considering the sentencing options available for his offense of the sale of cocaine; thus, where he stood mute at sentencing, he could not later claim prejudice or that plea counsel was ineffective and his petition for post-conviction relief was properly denied. Ruff v. State, 910 So. 2d 1160, 2005 Miss. App. LEXIS 232 (Miss. Ct. App. 2005).

Inmate seeking post-conviction relief was not eligible to have his sentences run concurrently, because he committed the second offense while on probation. Johnson v. State, 909 So. 2d 1149, 2005 Miss. App. LEXIS 70 (Miss. Ct. App. 2005).

Denial of post-conviction relief was affirmed because the circuit court acted within its authority when it corrected its sentencing order by striking out the language that ordered the state sentence to be served concurrently with the federal sentence, as the record showed the sentencing order was amended before the end of the circuit court term. Toney v. State, 906 So. 2d 28, 2004 Miss. App. LEXIS 1030 (Miss. Ct. App. 2004).

The Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 et seq. does not give a prisoner the right to initiate or proceed with an independent, original action for free documents where he is not pleased with the trial judge's ruling. Kemp v. State, 904 So. 2d 1137, 2004 Miss. App. LEXIS 994 (Miss. Ct. App. 2004).

Trial court properly denied an inmate's petition for post-conviction relief alleging that his name was incorrect on the indictment. The name in the indictment had been corrected at the time of the plea. Neal v. State, 879 So. 2d 1111, 2004 Miss. App. LEXIS 747 (Miss. Ct. App. 2004).

Record contained a transcript of a guilty plea hearing in which the judge sentenced the inmate to two years' imprisonment for the sale of cocaine; however, also included in the record was a sworn affidavit from the court reporter stating that she had made errors in the original transcript and therefore later made a corrected copy, which showed that the judge had sentenced the inmate to serve 10 years, not two. Because the court reporter's transcript was subject to correction and no order of the trial court ever gave the inmate a two-year sentence, his sentence of 10 years' imprisonment was correct; thus, his motion for post-conviction relief was properly denied. Collins v. State, 879 So. 2d 1112, 2004 Miss. App. LEXIS 769 (Miss. Ct. App. 2004).

Inmate's voluntary act of pleading guilty to the crime of manslaughter foreclosed an appellate court from considering issues relating to the voluntariness of a confession or the right to a speedy trial in a motion seeking post-conviction relief. Young v. State, 877 So. 2d 552, 2004 Miss. App. LEXIS 669 (Miss. Ct. App. 2004).

Defendant's petition for post-conviction relief was properly denied where defendant consciously and knowingly entered a plea of guilty to the charge of transfer of cocaine; had he not pled guilty, the case would have proceeded to trial because the indictment was never quashed, and based on the totality of the record, there existed a factual basis for the guilty plea. Boddie v. State, 875 So. 2d 180, 2004 Miss. LEXIS 686 (Miss. 2004).

Denial of post-conviction relief was affirmed because the inmate's sentence for transfer of cocaine was within the maximum sentence, and considering the totality of the circumstances, counsel's performance was neither deficient nor prejudicial. Falconer v. State, 873 So. 2d 163, 2004 Miss. App. LEXIS 417 (Miss. Ct. App. 2004).

Trial court properly denied defendant's motion for post-conviction relief which targeted the effectiveness of counsel and narrowly discussed the voluntariness of defendant's plea as being without merit; although defendant complained about the lack of pretrial investigation, he failed to tell the trial judge or the appellate court which facts in mitigation a further investigation would have revealed, so that defendant did not demonstrate prejudice, having not alleged anything that would have led to a different result. Hebert v. State, 864 So. 2d 1041, 2004 Miss. App. LEXIS 77 (Miss. Ct. App. 2004).

Inmate's petition for post-conviction relief based on the alleged involuntariness of a plea was properly denied because the inmate was unable to establish that threats and coercion were used by defense counsel and law enforcement; moreover, the inmate had given sworn testimony to the contrary at the plea hearing. Steen v. State, 868 So. 2d 1038, 2004 Miss. App. LEXIS 8 (Miss. Ct. App. 2004).

Defendant's post-conviction motion was properly denied as his plea to armed robbery was knowing and voluntary even though he did not initially admit that he had been armed; defendant was given a thorough explanation of the elements and State's recitation of proof, after which he entered his plea. Hamlin v. State, 853 So. 2d 841, 2003 Miss. App. LEXIS 728 (Miss. Ct. App. 2003).

Denial of defendant's motion for post-conviction relief was proper and defendant's claim that his attorney was ineffective in that he lied to the trial court, attempted to induce perjured testimony, and gave up on the adversarial process was rejected; defendant failed to support his assertions with any factual basis or supporting affidavits, and his assertions lacked the specificity and detail required to establish a prima facie showing under Miss. Code Ann. § 99-39-11(2), and he failed to show that but for his counsel's actions, the results of the trial court would have been different. Hamlin v. State, 853 So. 2d 841, 2003 Miss. App. LEXIS 728 (Miss. Ct. App. 2003).

3. Post-conviction relief improperly denied.

On the inmate's claim that his execution would be unconstitutional under the Eighth and Fourteenth Amendments because he was mentally retarded, he was entitled to and did not receive an Atkins hearing because the inmate met the requirements of Chase and its progeny; the inmate's claim was not procedurally barred under Miss. Code Ann. § 99-39-21(1) because he could not have raised the claim before the trial court, as the Atkins decision was decided 12 days after the inmate was sentenced to death. Thorson v. State, 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Miss. Code Ann. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting drug cases where dosage units are the standard form of measurement, and the weight of the drug is considered a default measurement where the drug is not found in "dosage unit" form; therefore, a motion for post-conviction relief should have been granted because a sentence imposed was illegal where defendant had 180 tablets that weighed above the requisite number of grams. Finn v. State, 979 So. 2d 1, 2007 Miss. App. LEXIS 451 (Miss. Ct. App. 2007), rev'd, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

Where there were contradictory statements as to whether an appeal had been requested and whether defendant had been advised of his right to an appeal, he was entitled to an evidentiary hearing on the matter; therefore, the trial court erred in denying defendant's request for post-conviction relief. Willis v. State, 904 So. 2d 200, 2005 Miss. App. LEXIS 395 (Miss. Ct. App. 2005).

Trial court should have construed defendant's motion to vacate judgment as a motion for post-conviction relief and should have exercised jurisdiction over the matter. While it was true that he sought to vacate the 1999 judgment (pursuant to his guilty plea), it was clear that he was seeking relief which could have been properly brought pursuant to Mississippi's Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 et. seq., specifically pursuant to Miss. Code Ann. § 99-39-5; for example, he alleged due process violations and ineffective assistance of counsel, and in affidavits, he made allegations that counsel had promised him that his probation for a prior conviction would not be revoked upon his entering a guilty plea to the sale of cocaine in the more recent offense. Miller v. State, 910 So. 2d 56, 2005 Miss. App. LEXIS 56 (Miss. Ct. App. 2005).

In a rape case, a trial court should have granted an inmate's petition for post-conviction relief based on newly discovered evidence because the testimony of a witness corroborated the inmate's allegation that the parties engaged in consensual sex after meeting in a bar, the testimony of other witnesses would have cast a doubt regarding whether or not the victim was raped, the new evidence was material and not merely impeaching, and the fact that one witness was named during trial did not mean that defense counsel failed to exercise due diligence. Hunt v. State, 877 So. 2d 503, 2004 Miss. App. LEXIS 18 (Miss. Ct. App.), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 852 (Miss. 2004).

Cited in: Dearman v. State, 910 So. 2d 708, 2005 Miss. App. LEXIS 189 (Miss. Ct. App. 2005).

4. Post-conviction relief properly granted.

On the inmate's petition for post-conviction relief, the court held that he was entitled to an evidentiary hearing on his claim that his attorneys were ineffective for failing to investigate and present mitigating evidence of the inmate's character and childhood history during the penalty phase of his trial. The inmate contended that if his counsel had investigated, they would have uncovered at least 15 witnesses who could have provided mitigating evidence concerning his childhood, education, drug habits, and other issues related to his character and childhood history. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Where petitioner's plea counsel was unaware that the law had changed and required convicted armed robbers to serve every day of their sentence, the post-conviction court set aside petitioner's fifteen-year sentence for armed robbery entered in accordance with the plea agreement. Counsel had erroneously informed petitioner that he would be eligible for parole after serving ten years of his sentence. Hudson v. State, 932 So. 2d 842, 2005 Miss. App. LEXIS 864 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 509 (Miss. 2006).

5. Issues raised on appeal.

Because defendant's argument on appeal that his two sentences for conspiracy to commit kidnapping should have run concurrently to each other and concurrently to his prior sentences for grand larceny and aggravated assault was not raised in his petition for post-conviction relief, and because defendant failed to request or obtain leave to amend his petition, the issue was procedurally barred. Magee v. State, 271 So. 3d 510, 2018 Miss. App. LEXIS 544 (Miss. Ct. App. 2018).

Because appellant inmate did not raise an issue relating to an alleged due process violation based on the lack of a court reporter in a motion for post-conviction relief, the issue was procedurally barred; at any rate, there was a court reporter present at the inmate's plea colloquy hearing. Shies v. State, 19 So. 3d 770, 2009 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 504 (Miss. 2009).

After an appeal from a denial of post-conviction relief, an appellate court refused to consider issues that were raised for the first time on appeal; appellant inmate only raised two basic errors before the trial court. Garner v. State, 21 So. 3d 629, 2008 Miss. App. LEXIS 636 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 571 (Miss. Nov. 19, 2009).

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CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

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§ 99-39-3. Purpose.

(1) The purpose of this article is to revise, streamline and clarify the rules and statutes pertaining to post-conviction collateral relief law and procedures, to resolve any conflicts therein and to provide the courts of this state with an exclusive and uniform procedure for the collateral review of convictions and sentences. Specifically, this article repeals the statutory writ of error coram nobis, supersedes Rule 8.07 of the Mississippi Uniform Criminal Rules of Circuit Court Practice and abolishes the common law writs relating to post-conviction collateral relief, including by way of illustration but not limitation, error coram nobis, error coram vobis, and post-conviction habeas corpus, as well as statutory post-conviction habeas corpus. The relief formerly accorded by such writs may be obtained by an appropriate motion under this article. The enactment of this article does not affect any pre-conviction remedies.

(2) Direct appeal shall be the principal means of reviewing all criminal convictions and sentences, and the purpose of this article is to provide prisoners with a procedure, limited in nature, to review those objections, defenses, claims, questions, issues or errors which in practical reality could not be or should not have been raised at trial or on direct appeal.

HISTORY: Laws, 1984, ch. 378, § 2, eff from and after passage (approved April 17, 1984).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Editor's Notes — Writ of error coram nobis (§ 99-35-145) was repealed by Laws of 1984, ch. 387, § 18, eff from and after April 17, 1984.

Cross References — Habeas corpus relief, see § 11-43-1 et seq.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Questions not raised in lower court.
3. Successive writs.
4. Pro se.
5. Habeas corpus.
6. Standing.
7. Exclusion of blacks from jury.

1. In general.

Court of appeals properly affirmed an order restructuring defendant's sentences to run consecutively, resulting in a sentence without the enhanced penalty, because the circuit court had authority to restructure the sentence to implement its original intent; following the supreme court's order of remand for resentencing, the circuit court stated that when it imposed the original sentence it thought defendant was going to have another 10-year sentence running consecutively to concurrent sentences. Sallie v. State, 237 So. 3d 749, 2018 Miss. LEXIS 117 (Miss. 2018).

Chancery court did not err in dismissing a petition for writ of error coram nobis for lack of subject-matter jurisdiction because the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA) abolished the common law writ of erro coram nobmis and made such relief available exclusively through the UPCCRA; because all of petitioner's claims were collateral attacks on his aggravated-assault conviction or sentence, he was obligated to raise them in a post-conviction relief motion. Clay v. State, 232 So. 3d 196, 2017 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 503 (Miss. 2017), cert. denied, 229 So. 3d 714, 2017 Miss. LEXIS 513 (Miss. 2017).

Although an inmate titled a motion as a writ for habeas corpus ad subjidiciem, the inmate was actually pursuing post-conviction relief under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-1 et seq., which governed post-conviction habeas petitions. Creel v. King, 161 So. 3d 1098, 2014 Miss. App. LEXIS 681 (Miss. Ct. App. 2014).

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the trial court lacked the jurisdiction necessary to consider the inmate's motion since the inmate did not exhaust his administrative remedies, and not included within the purpose of of the Mississippi Uniform Post-Conviction Collateral Relief Act was the filing of a direct action with a trial court concerning the administrative policies of the Mississippi Department of Corrections (MDOC); the trial court erroneously treated the inmate's motion as if it were a motion for post-conviction relief because the inmate's request did not complain about the validity of any of his convictions, of the sentences received, or that he was unlawfully incarcerated but simply argued that the MDOC had incorrectly classified him as "parole ineligible," and a motion for post-conviction relief was not the correct procedural vehicle for such an argument. Keys v. State, 67 So. 3d 783, 2010 Miss. App. LEXIS 565 (Miss. Ct. App. 2010), rev'd, 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Circuit court appropriately treated the inmate's petition for habeas corpus as a motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-3(1), which provided that the relief formerly accorded by a post-conviction writ of habeas corpus may be obtained by a motion for post-conviction relief; Miss. Code Ann. § 99-39-5(1) contained the grounds for post-conviction relief, including claims that the movant's sentence had expired, or his probation, parole or conditional release unlawfully revoked. or he was otherwise unlawfully held in custody. Ivory v. State, 999 So. 2d 420, 2008 Miss. App. LEXIS 735 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 51 (Miss. 2009).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief pursuant to Miss. Code Ann. § 99-39-3(2) as the inmate was unable to show that but for the alleged ineffective assistance of counsel he would not have pled guilty, and the inmate stated that he was pleased with his attorney's representation at the plea hearing. Ivy v. State, 918 So. 2d 84, 2006 Miss. App. LEXIS 10 (Miss. Ct. App. 2006).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief pursuant to Miss. Code Ann. § 99-39-3 as the inmate was properly advised before pleading guilty, he was not deprived of effective assistance of counsel, and his 30-year sentence for armed robbery with 15 years suspended was proper under Miss. Code Ann. § 97-3-79. Steen v. State, 933 So. 2d 1052, 2006 Miss. App. LEXIS 529 (Miss. Ct. App. 2006).

Appellate court affirmed the denial of the inmate's motion for post-conviction relief as the inmate filed the motion more than three years after his conviction and did not assert any of the tolling provisions in Miss. Code Ann. § 99-39-5(2). Little v. State, 918 So. 2d 97, 2006 Miss. App. LEXIS 8 (Miss. Ct. App. 2006).

Appellate court affirmed the summary dismissal of the inmate's motion for post-conviction relief because the inmate was no longer serving time in a Mississippi prison when he filed the motion; thus, Miss. Code Ann. § 99-39-3 did not provide the inmate any relief. Smith v. State, 914 So. 2d 1248, 2005 Miss. App. LEXIS 857 (Miss. Ct. App. 2005).

Court properly treated a petition for a writ of error coram nobis as a motion for post-conviction relief because, pursuant to Miss. Code. Ann. § 99-39-3(1), the post-conviction relief statutes replaced the writ of error coram nobis. Accordingly, petitioner's motion was properly dismissed as time barred under the post-conviction relief statutes. Morris v. State, 918 So. 2d 807, 2005 Miss. App. LEXIS 405 (Miss. Ct. App. 2005), cert. denied, 921 So. 2d 1279, 2006 Miss. LEXIS 24 (Miss. 2006).

Where defendant answered questions from trial judge under oath, on the record, and in presence of counsel, during his plea hearing denying any coercion in pleading guilty, defendant's claim that his plea was involuntary was properly rejected. Bradley v. State, 845 So. 2d 756, 2003 Miss. App. LEXIS 432 (Miss. Ct. App. 2003).

Because Miss. Code Ann. § 99-39-3(2) of the Mississippi Uniform Post-Conviction Collateral Relief Act was defendant's exclusive remedy for post-conviction relief (PCR), the trial court correctly treated defendant's complaint for declaratory judgment as a petition for PCR; the motion was properly denied as untimely pursuant to Miss. Code Ann. § 99-39-5 (Rev. 2000). Moore v. State, 859 So. 2d 1018, 2003 Miss. App. LEXIS 722 (Miss. Ct. App. 2003).

Post-conviction proceedings are for purpose of bringing to trial court's attention to facts not known at time of judgment. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Post-conviction proceedings are for the purpose of bringing to the trial court's attention facts not known at the time of judgment. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Post-Conviction Collateral Relief Act provides procedure limited in nature to review those matters which, in practical reality, could not or should not have been raised at trial or on direct appeal. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996); Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Post-conviction relief is not granted upon facts and issues which could or should have been litigated at trial or on appeal. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in post-conviction relief statute are applicable in death penalty post-conviction relief applications. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

The State Supreme Court was not required to remand a case, which was brought under the Uniform Post-Conviction Collateral Relief Act, to another sentencing jury after the United States Supreme Court held that a conviction which had been vacated and dismissed had not been a proper aggravating circumstance for consideration by the trial jury and reversed and remanded the judgment of conviction. The State Supreme Court had no authority to make the decision itself as to whether to reimpose the death penalty or reduce the defendant's sentence to life imprisonment because of the invalidation of the aggravating circumstance which was considered by the original trial jury. Clemons v. State, 593 So. 2d 1004, 1992 Miss. LEXIS 7 (Miss. 1992).

The Post-Conviction Relief Act is not a new concept in Mississippi jurisprudence; it merely codifies existing constraints on review traditionally practiced by the Supreme Court. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

The Post-Conviction Relief Act could be retroactively applied to a petitioner whose claim was grounded on a substantive portion of the Act, under which his rights had not really changed. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

The post-conviction collateral relief act is a codification of the law existing in Mississippi for many years. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

2. Questions not raised in lower court.

Any prosecutorial misconduct claims could have been raised at trial, in the direct appeal, or in the initial post-conviction filings, and petitioner made no argument that those claims wee excepted from the procedural bars; therefore, those claims had been waived. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner made no attempt to argue that the issues that the State knew an inmate was testifying untruthfully and that the State knowingly put on false evidence could not have been raised in the initial post-conviction proceedings or at any other time since his direct appeal, and thus, those claims had been waived and were barred. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

When the Attorney General sought an alderman's removal based on a prior conviction, and the alderman claimed insufficient evidence showed the alderman's guilty plea leading to the conviction, the claim was procedurally barred because (1) the alderman did not raise the claim in the trial court, and (2) any relief was only available under the Mississippi Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-3, which the alderman did not seek. Rogers v. State (In re Removal of Rogers), 177 So. 3d 193, 2014 Miss. App. LEXIS 660 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 550 (Miss. 2015), cert. denied, — So. 3d —, 2015 Miss. LEXIS 549 (Miss. 2015), cert. denied, 178 So. 3d 333, 2015 Miss. LEXIS 548 (Miss. 2015).

Because an inmate's claims in his motion for post-conviction relief that his appellate counsel was ineffective were decided on direct appeal, those issues were procedurally barred from appellate review by the doctrine of res judicata; the inmate's claim that his appellate counsel failed to cite his trial counsel's error in not litigating his claim of an illegal search and seizure of his vehicle was procedurally barred because the inmate failed to raise the claim of illegal search and seizure during the trial and on direct appeal. Lattimore v. State, 37 So. 3d 678, 2010 Miss. App. LEXIS 50 (Miss. Ct. App. 2010).

Post-conviction issues, reviewed for the first time, can be subjected to cumulative-error scrutiny without being barred by the doctrine of res judicata. Thorson v. State, 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Complaints raised by the inmate directly relating to the manner in which he was sentenced all existed immediately at the conclusion of the sentencing hearing and were, thus, appropriate matters for a direct appeal pursuant to Miss. Code Ann. § 99-39-3(2) of the Mississippi Uniform Post-Conviction Collateral Relief Act; because the inmate did not take a direct appeal, those issues were barred from consideration in a post-conviction relief proceeding pursuant to Miss. Code Ann. § 99-39-21(1). Swindle v. State, 881 So. 2d 281, 2003 Miss. App. LEXIS 1062 (Miss. Ct. App. 2003), rev'd, 881 So. 2d 174, 2004 Miss. LEXIS 713 (Miss. 2004).

Post-conviction relief does not lie for facts and issues which were litigated at trial or on direct appeal, or which could or should have been litigated at trial and on appeal. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

The rule that questions not raised in the lower court will not be reviewed on appeal to the Supreme Court applies to the Supreme Court's review of appeals involving collateral attacks originating in the lower court as well as its review of convictions flowing in the wake of direct appeal, and is particularly true where constitutional questions are involved; thus, a post-conviction relief petitioner, by failing to attack the constitutionality of the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.) in the lower court, waived any error in this regard and could not seek reversal of the trial court's ruling in the Supreme Court. Patterson v. State, 594 So. 2d 606, 1992 Miss. LEXIS 42 (Miss. 1992).

3. Successive writs.

Several statutory bars applied because the mandate in petitioner's direct appeal issued in October 1996, and the successive petition for post-conviction relief was filed in September 2018; that filing was subject to the one-year time bar. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's claims of ineffective assistance of trial counsel were raised and rejected in the initial post-conviction relief proceedings, and thus, the claims in his second petition were untimely and successive and barred by res judicata. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Prisoner's post-conviction constitutional challenge to his habitual offender sentence failed because the argument was barred pursuant to the prohibition against successive writs, for after two direct appeals, he had filed numerous post-conviction motions in which relief had been denied. McLamb v. State, 974 So. 2d 935, 2008 Miss. App. LEXIS 64 (Miss. Ct. App. 2008).

A trial court correctly denied, as a successive writ, a defendant's second motion for post-conviction relief, even though the second pleading was denominated as a "Petition for Habeas Corpus Post-Conviction Relief," since the Post-Conviction Collateral Relief Act effectively supplanted the prior statutory and rule versions of the writ of habeas corpus so that the defendant's habeas petition would be treated as a petition for post-conviction relief filed pursuant to the Post-Conviction Relief Act. Grubb v. State, 584 So. 2d 786, 1991 Miss. LEXIS 506 (Miss. 1991).

4. Pro se.

Where a prisoner is proceeding pro se, the court takes that fact into account and, in its discretion, credits not so well pleaded allegations, to the end that a prisoner's meritorious complaint may not be lost because it was inartfully drafted. Moore v. Ruth, 556 So. 2d 1059, 1990 Miss. LEXIS 36 (Miss. 1990).

5. Habeas corpus.

Circuit court erred in failing to treat appellant's petition for a writ of habeas corpus as one for post-convicting relief because although appellant did not style his petition for a writ of habeas corpus as a motion for post-conviction relief, the motion should have been treated as such; appellant's petition was clearly not challenging any pre-conviction incarceration. Smith v. State, 29 So. 3d 126, 2010 Miss. App. LEXIS 113 (Miss. Ct. App. 2010).

Petitioner was not denied his right to a writ of habeas corpus when his notice of appeal in writ of state habeas corpus was denied as a successive writ; the Mississippi Legislature had enacted a comprehensive procedure for post-conviction relief through the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-3(1). Austin v. State, 914 So. 2d 1281, 2005 Miss. App. LEXIS 916 (Miss. Ct. App. 2005).

Other issues which were either presented through direct appeal or could have been presented on direct appeal or at trial are procedurally barred on postconviction relief motion and cannot be relitigated under guise of poor representation by counsel. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

A trial court correctly denied, as a successive writ, a defendant's second motion for post-conviction relief, even though the second pleading was denominated as a "Petition for Habeas Corpus Post-Conviction Relief," since the Post-Conviction Collateral Relief Act effectively supplanted the prior statutory and rule versions of the writ of habeas corpus so that the defendant's habeas petition would be treated as a petition for post-conviction relief filed pursuant to the Post-Conviction Relief Act. Grubb v. State, 584 So. 2d 786, 1991 Miss. LEXIS 506 (Miss. 1991).

One who has been denied bail may seek his or her liberty via habeas corpus. There is nothing in the Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.), § 99-35-115, [former] Miss. Sup. Ct. R. 9 or [former] Unif. Crim. R. Cir. Ct. Prac. 7.02 which purports to suspend this right nor could the right ever be suspended except in the limited circumstance provided for by the constitution. Although purely collateral post-conviction remedies attacking a judgment of conviction or sentence should be sought under authority of the Post-Conviction Collateral Relief Act since that Act, in the pure post-conviction collateral relief sense, is arguably "post-conviction habeas corpus renamed," matters of appeal may appropriately be addressed through true habeas corpus actions; bail pending appeal via habeas corpus is incident to the direct review of a conviction or sentence and, therefore, is not affected, prohibited or otherwise governed by the Uniform Post-Conviction Collateral Relief Act. Habeas corpus is one way of seeking liberty following conviction and pending appeal, and statutory and uniform rule procedure another, although the standards for granting or denying bail remain the same in either situation. Walker v. State, 555 So. 2d 738, 1990 Miss. LEXIS 40 (Miss. 1990).

A petitioner's petition for a writ of habeas corpus would be treated as a motion under § 99-39-5(1)(g), which authorizes a post-conviction motion in the nature of collateral review by the petitioner, since she was in custody under a Mississippi conviction and claimed that she was "unlawfully held in custody." Although the petitioner was convicted in 1981, and the conviction was affirmed on direct appeal in 1983, the substantive portions of the Post-Conviction Relief Act, which became effective April 17, 1984, were applicable to the petition. Furthermore, the waiver and procedural bar provisions of the Act were applicable even though the petitioner was tried and convicted prior to the effective date of the Act. State v. Read, 544 So. 2d 810, 1989 Miss. LEXIS 251 (Miss. 1989).

6. Standing.

Dismissal of appellant's motion to amend petition for a writ of coram nobis was appropriate because, although he was attempting to challenge his 1994 conviction in an effort to invalidate his life sentence, he lacked standing to do so because he was no longer incarcerated or on parole or probation for that conviction, Miss. Code Ann. § 99-39-3(1). Wilson v. State, 76 So. 3d 733, 2011 Miss. App. LEXIS 326 (Miss. Ct. App.), cert. denied, 76 So. 3d 169, 2011 Miss. LEXIS 590 (Miss. 2011).

A defendant did not have standing to challenge the constitutionality of the Post-Conviction Relief Act, this section, inasmuch as he was afforded all of his constitutional rights and had not been disadvantaged by the Act. Aldridge v. State, 524 So. 2d 330, 1988 Miss. LEXIS 215 (Miss. 1988).

A defendant lacked standing to challenge the constitutionality of the Uniform

Post-Conviction Relief Act (§ 99-39-3) where he failed to point to any right, privilege or opportunity that had been denied him by the act but which he would have enjoyed had the act never been passed. Reynolds v. State, 521 So. 2d 914, 1988 Miss. LEXIS 106 (Miss. 1988).

7. Exclusion of blacks from jury.

Notwithstanding the later publication of a newspaper article and the taking of a deposition bearing on the issue, defendant was not entitled to leave to proceed in the trial court pursuant to the post-conviction collateral relief act in order to assert the issue of the exclusion of blacks from the trial jury where, although he knew at the time of trial that the state had used all of its peremptory challenges to exclude blacks, no motion or objection concerning such action was entered, nor was the issue raised on appeal, nor was it raised in defendant's 2 subsequent petitions for writ of error coram nobis. Smith v. State, 500 So. 2d 973, 1986 Miss. LEXIS 2857 (Miss. 1986).

A petitioner seeking to vacate or set aside his judgment of conviction and sentence of death could not successfully raise for the first time the issue of exclusion of blacks from the jury where more than 4 years had elapsed since the date the guilty plead had been entered, the sentencing jury impaneled, and the death sentence imposed, and, in the interim, at least 3 different sets of counsel had worked on the case. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

RESEARCH REFERENCES

ALR.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury–post-Batson state cases. 47 A.L.R.5th 259.

Propriety of federal court's considering state prisoner's petition under 28 USCS § 2254 where prisoner has exhausted state remedies as to some, but not all, claims in petition. 43 A.L.R. Fed. 631.

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

1987 Mississippi Supreme Court Review, Post conviction relief. 57 Miss. L. J. 524, August, 1987.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

(1) Any person sentenced by a court of record of the State of Mississippi, including a person currently incarcerated, civilly committed, on parole or probation or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period, may file a motion to vacate, set aside or correct the judgment or sentence, a motion to request forensic DNA testing of biological evidence, or a motion for an out-of-time appeal if the person claims:

(a) That the conviction or the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi;

(b) That the trial court was without jurisdiction to impose sentence;

(c) That the statute under which the conviction and/or sentence was obtained is unconstitutional;

(d) That the sentence exceeds the maximum authorized by law;

(e) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(f) That there exists biological evidence secured in relation to the investigation or prosecution attendant to the petitioner's conviction not tested, or, if previously tested, that can be subjected to additional DNA testing, that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution.

(g) That his plea was made involuntarily;

(h) That his sentence has expired; his probation, parole or conditional release unlawfully revoked; or he is otherwise unlawfully held in custody;

(i) That he is entitled to an out-of-time appeal; or

(j) That the conviction or sentence is otherwise subject to collateral attack upon any grounds of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

(2) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the petitioner can demonstrate either:

(a)(i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or

(ii) That, even if the petitioner pled guilty or nolo contendere, or confessed or admitted to a crime, there exists biological evidence not tested, or, if previously tested, that can be subjected to additional DNA testing that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution.

(b) Likewise excepted are those cases in which the petitioner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked. Likewise excepted are filings for post-conviction relief in capital cases which shall be made within one (1) year after conviction.

(3) This motion is not a substitute for, nor does it affect, any remedy incident to the proceeding in the trial court, or direct review of the conviction or sentence.

(4) Proceedings under this article shall be subject to the provisions of Section 99-19-42.

(5) For the purposes of this article:

(a) "Biological evidence" means the contents of a sexual assault examination kit and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This definition applies whether that material is catalogued separately, such as on a slide, swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, cigarettes or other items;

(b) "DNA" means deoxyribonucleic acid.

HISTORY: Laws, 1984, ch. 378, § 3; Laws, 1995, ch. 566, § 3; Laws, 2000, ch. 569, § 12; Laws, 2009, ch. 339, § 2, eff from and after passage (approved Mar. 16, 2009).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Editor's Notes — Laws of 2000, ch. 569, § 1, provides:

"SECTION 1. Sections 1 through 18 of this act may be cited as the 'Mississippi Capital Post-Conviction Counsel Act.' "

Sections 1 through 10 of Laws of 2000, ch. 569 are codified at Article 3 of Chapter 39 of this title. Sections 11 through 18 of ch. 569 contain §§ 99-19-105, 99-39-5, 99-39-23, 99-39-27, 99-15-18, 99-39-28, 99-19-106, and the repeal of § 99-19-49.

Cross References — Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

Preservation of biological evidence generally, see § 99-49-1.

JUDICIAL DECISIONS

1. In general.

There was no Brady violation because petitioner did not make a showing that the evidence in an inmate's file was favorable to the defense or that it would have led to a different outcome; court orders would have been public records available to the defense before trial, and some of the information in documents could have been harmful to the defense. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Any prosecutorial misconduct claims could have been raised at trial, in the direct appeal, or in the initial post-conviction filings, and petitioner made no argument that those claims wee excepted from the procedural bars; therefore, those claims had been waived. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner failed to show the prosecutor's statements were so inflammatory as to require relief because no objects were posed by defense counsel. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Trial court did not err by allowing a note from a witness to petitioner while both were detained in the county jail because as to authentication, the State offered evidence that witness gave the letter to a jail trusty who submitted it to the jailer who transferred it to the investigator; there was nothing in the particular letter more incriminating than petitioner's own letters that he wrote to the witness, which were admitted into evidence. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's had been waived under the Box guidelines even if the expert's conclusions as to the position of the body should have been disclosed because petitioner never made any objection on the basis of the State's failure to disclose the expert's opinion or unfair surprise, and the defense never requested a continuance; the opinion likely would have been admissible anyway. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Time for raising a Batson issue had long since passed, and the claim could and should have been raised in prior proceedings, and thus, the issue was barred; further, petitioner's Batson claims were previously discussed extensively, and res judicata applied. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

There was no Batson violation because the side-by-side comparison between jurors showed that their situations were not identical; nothing in the record indicated that the State knew that a white member of the jury had DUIs yet accepted him anyway. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner did not show that the jury relied on any extraneous or outside-the-courtroom information because he submitted no proof of any improper external influence upon the jury, and it was more likely that the errors were attributable to faulty memories a quarter century after the trial; the jury was repeatedly instructed that the sentencing verdict did not have to be unanimous. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Appellant's claim that his indictment was defective was procedurally barred from review because the issue was directly addressed in the prior opinion of the court of appeals. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Because all of petitioner's claims were collateral attacks on his aggravated-assault conviction or sentence, he was obligated to raise them in a post-conviction relief motion. Clay v. State, 232 So. 3d 196, 2017 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 503 (Miss. 2017), cert. denied, 229 So. 3d 714, 2017 Miss. LEXIS 513 (Miss. 2017).

Trial court did not err in dismissing appellant's motion for postconviction relief because appellant was not denied his right to a speedy trial; a valid guilty plea operated as a waiver of the right to a speedy trial, and explained the majority of the delay was due to defendant firing his counsel and needing time to hire new counsel, and his desire for a mental evaluation. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Trial court did not err in dismissing appellant's motion for postconviction relief because the indictment was not defective for failing to allege the essential elements of sexual battery of a child under fourteen years old when the charged offense in the indictment tracked the language set forth in the statute; the element of consent is not an essential element of the charged crime. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Motion for reconsideration regarding the denial of a motion for a directed verdict is not a ground for relief under Miss. Code Ann. § 99-39-5. Triplett v. State, 207 So. 3d 1288, 2016 Miss. App. LEXIS 496 (Miss. Ct. App. 2016).

Prisoners awaiting execution in Mississippi were not entitled to an injunction preventing the State from conducting executions with compounded pentobarbital because Mississippi's sovereign immunity prevented a federal court from enjoining state officials to follow state law, this section explicitly empowered prisoners to challenge their sentence, and the prisoners did not show they were likely to succeed in establishing a violation of either their procedural or substantive due process rights. Jordan v. Fisher, 823 F.3d 805, 2016 U.S. App. LEXIS 11734 (5th Cir. Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 1069, 197 L. Ed. 2d 188, 2017 U.S. LEXIS 1405 (U.S. 2017).

Appellant's argument attacked his guilty plea and the original sentence imposed by the circuit court; therefore, appellant's motion for post-conviction relief would be subject to review by the circuit court, Miss. Code Ann. § 99-39-5 (2007). Accordingly, the circuit court erred in its conclusion that it did not have jurisdiction to consider appellant's motion. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Circuit court appropriately treated the inmate's petition for habeas corpus as a motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-3(1), which provided that the relief formerly accorded by a post-conviction writ of habeas corpus may be obtained by a motion for post-conviction relief; Miss. Code Ann. § 99-39-5(1) contained the grounds for post-conviction relief, including claims that the movant's sentence had expired, or his probation, parole or conditional release unlawfully revoked. or he was otherwise unlawfully held in custody. Ivory v. State, 999 So. 2d 420, 2008 Miss. App. LEXIS 735 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 51 (Miss. 2009).

Trial court's authority to grant an out-of-time appeal was not implicated because the trial court did not consider defendant's motion under the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), and defendant's motion did not invoke the UPCCRA or make any attempt at compliance with the UPCCRA's pleading requirements, Miss. Code Ann. § 99-39-9. Dorsey v. State, 986 So. 2d 1080, 2008 Miss. App. LEXIS 428 (Miss. Ct. App. 2008).

Defendant's motion for post-conviction relief was time-barred because it was filed beyond the statutory three-year time limit, Miss. Code Ann. § 99-39-5(2). Jones v. State, 995 So. 2d 822, 2008 Miss. App. LEXIS 389 (Miss. Ct. App. 2008).

Appellant inmate's motion for post-conviction relief was properly denied because the inmate could not claim that he was unfairly surprised by the amendment of an indictment to charge him as a habitual offender because appellee State's motion to amend the indictment against the inmate and charge him as a habitual offender was not granted until almost six months after it was filed, and the interval was sufficient time for the inmate to file a motion in opposition or, in the alternative, to prepare to oppose the motion at the hearing where the motion was granted and where he entered his plea of guilty. Jones v. State, 994 So. 2d 829, 2008 Miss. App. LEXIS 227 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 659 (Miss. 2008).

Appellant's indictment was not grounds for post-conviction relief because appellant waived the argument when he entered his guilty plea and, while appellant claimed that the indictment was defective for failing to include the language of Miss. Code Ann. § 99-7-2(1), there was no defect in the indictment because (1) inclusion of the language found in § 99-7-2(1) was not necessary for the indictment to be valid; (2) the indictment tracked the language Miss. Code Ann. § 41-29-139, which was the relevant statute for the crime of sale of a controlled substance; and (3) the indictment included the applicable statute number. Miller v. State, 973 So. 2d 319, 2008 Miss. App. LEXIS 45 (Miss. Ct. App.), cert. dismissed, 981 So. 2d 298, 2008 Miss. LEXIS 218 (Miss. 2008).

Defendant was not entitled to post-conviction relief because the motion was filed outside of the three-year limitation of Miss. Code Ann. § 99-39-5(2) and when defendant pled guilty to murder in violation of Miss. Code Ann. § 97-3-19(1)(a), defendant stated that he understood the nature of the charge, the elements of the crime, and the consequences of pleading guilty to such a crime; thus, defendant was sufficiently informed of the elements of murder and the consequences of pleading guilty to such a crime to make defendant's guilty plea intelligent and voluntary. Shanks v. State, 972 So. 2d 734, 2007 Miss. App. LEXIS 410 (Miss. Ct. App. 2007), cert. denied, 973 So. 2d 244, 2008 Miss. LEXIS 24 (Miss. 2008).

Court is not always required to return a post-conviction relief motion that fails to comply with statutory requirements, and therefore a motion that did not contain a concise statement of the statement or grounds upon which the motion was based, as required by Miss. Code Ann. § 99-39-9(1)(c), and did not state a claim upon which relief could have been granted under Miss. Code Ann. § 99-39-5(1), was properly not returned; the determination of whether to return the motion to defendant was left to the trial court since it did not comply with the statutory requirements, and it could not have survived a dismissal under Miss. Code Ann. § 99-39-11(2). Adams v. State, 962 So. 2d 640, 2007 Miss. App. LEXIS 38 (Miss. Ct. App. 2007).

Circuit court did not err in refusing to grant defendant's request for designation of the record under Miss. R. App. P. 10(b)(1) where, pursuant to Miss. Code Ann. § 99-39-5, his desire to pursue a civil action was not a ground for relief; the request failed to comply with Miss. Code Ann. § 99-39-9. Willis v. State, 950 So. 2d 200, 2006 Miss. App. LEXIS 713 (Miss. Ct. App. 2006).

Defendant's motion for post-conviction relief was untimely under Miss. Code Ann. § 99-39-5(2) because he filed his petition more than three years after the trial court accepted his plea of guilty and imposed the twenty-year sentence. Smith v. State, 922 So. 2d 43, 2006 Miss. App. LEXIS 126 (Miss. Ct. App. 2006).

Appellate court affirmed the summary dismissal of the inmate's motion for post-conviction relief because the inmate was no longer serving time in a Mississippi prison when he filed the motion; thus, Miss. Code Ann. § 99-39-5 did not provide the inmate any relief. Smith v. State, 914 So. 2d 1248, 2005 Miss. App. LEXIS 857 (Miss. Ct. App. 2005).

Dismissal of an inmate's motion for post-conviction relief was affirmed as the inmate had already served the sentence of which he complained in the motion and was currently serving time in a federal prison. Thus, because Miss. Code Ann. § 99-39-5 applied only to those inmates who were actually in custody of the state under a sentencing order from a Mississippi state court, the inmate was not entitled to relief. Durant v. State, 914 So. 2d 295, 2005 Miss. App. LEXIS 767 (Miss. Ct. App. 2005).

Defendant misinterpreted the law in trying to set aside his modified sentence of probation. If that sentence had been determined to be illegal under former Miss. Code Ann. § 47-7-33(1), which prohibited a sentencing judge from suspending a sentence or placing a convicted felon on probation, the trial court's earlier sentencing order in which he was given jail time would have take effect; defendant was not entitled to post-conviction relief where he had pled guilty and later received a more lenient modified sentence, and in any event, his action was time barred pursuant to Miss. Code Ann. § 99-39-5. Wallace v. State, 906 So. 2d 841, 2004 Miss. App. LEXIS 1156 (Miss. Ct. App. 2004).

In a post-conviction action, the trial court did not err in refusing to treat defendant's motion as a Miss. R. Civ. P. 60 motion where he was merely attempting to relitigate the case. Trotter v. State, 907 So. 2d 397, 2005 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 456 (Miss. 2005).

Claims asserted by defendant in his appeal fell within the provisions of Miss. Code Ann. § 99-39-5(a) and (g) and should have been presented in his first post-conviction relief motion; when he filed his first motion, his probation had already been revoked. Walker v. State, 910 So. 2d 584, 2005 Miss. App. LEXIS 149 (Miss. Ct. App. 2005).

Defendant's argument that the indictment against him was defective was barred pursuant to Miss. Code Ann. § 99-39-5(2); defendant previously presented the argument in his motion to vacate and set aside his conviction and sentence and the circuit court judge ruled appropriately. Beene v. State, 910 So. 2d 1152, 2005 Miss. App. LEXIS 229 (Miss. Ct. App. 2005).

Trial and appellate courts were without jurisdiction to address defendant's motion for post-conviction relief where defendant had completed his sentence at the time he filed the motion and was no longer in custody under the conviction and sentence. Wheeler v. State, 903 So. 2d 756, 2005 Miss. App. LEXIS 255 (Miss. Ct. App. 2005).

Defendant maintained the circuit court's sentencing order was illegal because according to Miss. Code Ann. § 47-7-33(1), he could not be given a suspended sentence since he was a priorly convicted felon. While that was true, and his action was not time barred, he had stood mute when he was handed an illegal sentence which was more favorable than what the legal sentence would have been; thus, he was not entitled to relief in his post-conviction action. Hughery v. State, 915 So. 2d 457, 2005 Miss. App. LEXIS 265 (Miss. Ct. App.), cert. denied, 921 So. 2d 1279, 2005 Miss. LEXIS 779 (Miss. 2005).

Trial court should have construed defendant's motion to vacate judgment as a motion for post-conviction relief and should have exercised jurisdiction over the matter. While it was true that he sought to vacate the 1999 judgment (pursuant to his guilty plea), it was clear that he was seeking relief which could have been properly brought pursuant to Mississippi's Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 et. seq., specifically pursuant to Miss. Code Ann. § 99-39-5; for example, he alleged due process violations and ineffective assistance of counsel, and in affidavits, he made allegations that counsel had promised him that his probation for a prior conviction would not be revoked upon his entering a guilty plea to the sale of cocaine in the more recent offense. Miller v. State, 910 So. 2d 56, 2005 Miss. App. LEXIS 56 (Miss. Ct. App. 2005).

Defendant's escape and absence for seven years before recapture so delayed the onset of appellate proceedings pertaining to his kidnapping conviction and sentencing that the State, as a matter of law, would have been prejudiced in locating witnesses and presenting evidence at a possible retrial. Thus, the "fugitive dismissal" rule applied, and defendant was not entitled to an out-of-time appeal. Hires v. State, 882 So. 2d 225, 2004 Miss. LEXIS 1167 (Miss. 2004).

Defendant's 1978 escape (defendant was captured in 1985) so delayed the onset of appellate proceedings pertaining to defendant's kidnapping conviction and sentencing that the State would have been prejudiced in locating witnesses and presenting evidence at a possible retrial, and therefore, the fugitive dismissal rule precluded defendant's right to an appeal; secondly, defendant's post-conviction claims pertaining to defendant's guilty plea on the charge of escape and the enhanced sentence as a habitual offender were time barred under Miss. Code Ann. § 99-39-5. Hires v. State, 2004 Miss. LEXIS 689 (Miss. June 17, 2004).

Although defendant failed to attach any affidavits or statements of "good cause" explaining why an affidavit of facts could not be obtained, the trial court's order denying post-conviction relief stated as a basis for denying relief a position that was contrary to the law; where the State sought to revoke defendant's probation based upon an allegation of criminal activity, it had to show proof of an actual conviction, or that a crime had been committed and that it was more likely than not that the probationer had committed the offense; an arrest was insufficient. Brown v. State, 864 So. 2d 1058, 2004 Miss. App. LEXIS 71 (Miss. Ct. App.), cert. denied, 866 So. 2d 473, 2004 Miss. LEXIS 74 (Miss. 2004).

Sentence imposed on defendant was illegal and contrary to public policy; although the statute of limitations to correct defendant's sentence had long ago expired, an exemption from that time bar applied, where the revocation of the option of parole ab initio was sufficient grounds for relief under Miss. Code Ann. § 99-39-5(2), but the relief provided the State with the option to pursue the death penalty. Twillie v. State, 2003 Miss. App. LEXIS 959 (Miss. Ct. App. Oct. 21, 2003).

Where the time to appeal from an initial sentencing order had expired because defendant's post-trial motions to correct "scrivener's errors" in the sentencing order had not tolled the running of the appeal period under Miss. R. App. P. 4(e)(g), the appellate court treated the motions to correct the sentencing orders that were filed in the trial court as motions under the Mississippi Uniform Collateral Post-Conviction Relief Act. Norwood v. State, 846 So. 2d 1048, 2003 Miss. App. LEXIS 472 (Miss. Ct. App. 2003).

As the Mississippi Uniform Post-Conviction Collateral Relief Act was the legal vehicle for judicial redress of a prisoner's claim that the trial court was without jurisdiction to impose sentence, Miss. Code Ann. § 99-39-5, where a defendant claimed that the trial court was without statutory jurisdiction to include a "day for day without the benefit of parole or probation" provision in its sentencing order, the trial court possessed the authority to rule on his motions to correct the sentence. Norwood v. State, 846 So. 2d 1048, 2003 Miss. App. LEXIS 472 (Miss. Ct. App. 2003).

Defendant was not entitled to a new trial on the charge of burglary after a petition for post-conviction relief was granted on an armed robbery charge because defendant had already fully served the time imposed by the time the petition was filed. Weaver v. State, 852 So. 2d 82, 2003 Miss. App. LEXIS 541 (Miss. Ct. App. 2003).

In a challenge to the banishment provision of defendant's sentence pursuant to Miss. Code Ann. § 99-39-5(1)(a), the substitution of some period of formal probationary supervision in place of a like term of banishment did not constitute an increase in the degree or character of defendant's punishment that would invoke constitutional concerns of double jeopardy, U.S. Const. Amend. V, and the requirement of supervised probation was essentially rehabilitative in its objectives and not punitive; thus, the change in probation terms was within the circuit court's authority as contained in Miss. Code Ann. § 47-7-35. Weaver v. State, 856 So. 2d 407, 2003 Miss. App. LEXIS 234 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 515 (Miss. 2003).

Where defendant did not appeal the sentence imposed following his guilty plea within 30 days of the entry of the order and did not move within 180 days of the order to reopen the appeal, defendant's appeal was procedurally barred, and defendant's proper remedy was post-conviction relief. Watson v. State, 841 So. 2d 218, 2003 Miss. App. LEXIS 246 (Miss. Ct. App. 2003).

The Mississippi Uniform Post-Conviction Collateral Relief Act is the legal remedy for claims by prisoners who contend that their guilty pleas were involuntary. Scott v. State, 817 So. 2d 642, 2002 Miss. App. LEXIS 306 (Miss. Ct. App. 2002).

Dismissal from the pretrial intervention program is not a proper basis for post-conviction relief. Anderson v. State, 795 So. 2d 591, 2001 Miss. App. LEXIS 349 (Miss. Ct. App. 2001).

House arrest is not a form of probationary release and a prisoner under house arrest is confined as a prisoner under the jurisdiction of the Department of Corrections in the normally-understood sense of that term; thus, post-conviction relief is an inappropriate remedy for a prisoner to pursue after he is removed from house arrest and returned to the general prison population. Lewis v. State, 761 So. 2d 922, 2000 Miss. App. LEXIS 266 (Miss. Ct. App. 2000).

Statute of limitations with respect to filing of petition for post-conviction relief from death sentence did not begin to run until close of murder defendant's direct appeal, despite fact that conviction was result of guilty plea rather than jury verdict, and petition for collateral review filed within three years of denial of rehearing of defendant's petition for certiorari in United States Supreme Court from decision of state Supreme Court in his direct appeal was therefore timely filed. (Per Banks, J., with three Justices concurring and one Justice concurring in result only.) Booker v. State, 699 So. 2d 132, 1997 Miss. LEXIS 375 (Miss. 1997).

Provision of post-conviction relief statute requiring that petition for relief be filed within three years after entry of judgment of conviction upon plea of guilty is directed toward guilty pleas that are not attended by direct appeals; cases in which direct appeals have been taken are subject to express language tolling running of time limitation during pendency of such appeals. (Per Banks, J., with three Justices concurring and one Justice concurring in result only.) Booker v. State, 699 So. 2d 132, 1997 Miss. LEXIS 375 (Miss. 1997).

Post-Conviction Collateral Relief Act provides procedure limited in nature to review those matters which, in practical reality, could not or should not have been raised at trial or on direct appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Appropriate standard for trial court in reviewing post-conviction motion for new trial is whether petitioner has proved by a preponderance of evidence that material facts exist which had not previously been heard and which require vacation of conviction or sentence. Turner v. State, 673 So. 2d 382, 1996 Miss. LEXIS 149 (Miss. 1996).

Recanting affidavit of coindictee who testified against capital murder defendant did not undermine confidence in outcome of original verdict against defendant so as to warrant new trial, despite allegation that prosecution entered into undisclosed plea bargain for coindictee's testimony, where coindictee recanted testimony but stated that testimony had been "colored" rather than perjured, coindictee later recanted his recantation of his testimony by repeatedly stating in hearing on motion for new trial that he had "no deal" with prosecution, coindictee's testimony during hearing corroborated the testimony of 3 prosecutors, one of coindictee's attorneys submitted affidavit 6 years after the fact stating that there had been plea bargain, coindictee's co-counsel stated in side bar at hearing that he was unaware of any plea agreements and same attorney never executed any affidavit confirming or denying existence of plea bargain, there was no written plea bargain agreement in the record, and it would have been unusual for coindictee to agree to 5 year sentence in exchange for his testimony when maximum sentence faced by coindictee was 5 years. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

The death of a defendant who has perfected his or her right to appeal does not render the appeal moot and leave his or her conviction permanently in place. (Overruling Berryhill v. State (Miss. 1986) 492 So. 2d 288 and Haines v. State (Miss. 1983) 428 So. 2d 590.) Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

A capital murder defendant's sentence of death would be vacated and remanded for a new sentencing hearing where the defendant sought relief based on the jury's reliance on an invalid aggravating circumstance, since the Supreme Court would not reweigh aggravating and mitigating circumstances or perform a harmless error analysis. Woodward v. State, 635 So. 2d 805, 1993 Miss. LEXIS 442 (Miss. 1993).

A defendant was entitled to an out-of-time appeal under subsection (1)(h) of this section where the defendant initially told his attorney that he did not want to appeal and signed a written memorandum to that effect, but, while the defendant was incarcerated, his grandfather made 3 requests on his behalf to the attorney for an appeal; these requests, which were made within 30 days of the judgment imposing sentence, were sufficient to revoke the defendant's waiver of his right to appeal. Minnifield v. State, 585 So. 2d 723, 1991 Miss. LEXIS 530 (Miss. 1991).

Acquittal in a criminal proceeding does not per se preclude parole revocation predicated upon the same charge. The terms and conditions of parole are broader than a mere directive that the parolee commit no felony. Additionally, there are differing burdens of proof in a criminal prosecution and in a parole revocation proceeding; at a criminal trial, the prosecution must prove the accused guilty beyond a reasonable doubt while in parole revocation proceedings, the accused is generally protected by lesser standards of proof. Thus, the failure of a jury to find one guilty beyond a reasonable doubt does not mean that, by some lesser standard, the facts and circumstances may not be found to be a violation of the terms and conditions of parole. However, where a prisoner was acquitted of the crime of rape, with which he had been charged while on parole, the acquittal might have meant that the prisoner was not guilty of any act which constituted a violation of the terms and conditions of his parole and, therefore, the acquittal on the criminal charge meant at the very least that, before his parole could be revoked, the State was required to offer actual proof that he committed an act violating the terms and conditions of his parole, and the mere fact that he was arrested and charged with rape would not suffice. Moore v. Ruth, 556 So. 2d 1059, 1990 Miss. LEXIS 36 (Miss. 1990).

Pro se defendant not barred from seeking relief under Post-Conviction Collateral Relief Act arising from guilty plea entered in 1979, although motion to vacate was not filed until 1986, where 3 year limitation period had been held to operate prospectively only. Jackson v. State, 506 So. 2d 994, 1987 Miss. LEXIS 2518 (Miss. 1987).

Notwithstanding the later publication of a newspaper article and the taking of a deposition bearing on the issue, defendant was not entitled to leave to proceed in the trial court pursuant to the Post-Conviction Collateral Relief Act in order to assert the issue of the exclusion of blacks from the trial jury where, although he knew at the time of trial that the state had used all of its peremptory challenges to exclude blacks, no motion or objection concerning such action was entered, nor was the issue raised on appeal, nor was it raised in defendant's 2 subsequent petitions for writ of error coram nobis. Smith v. State, 500 So. 2d 973, 1986 Miss. LEXIS 2857 (Miss. 1986).

If parolee's petition for mandamus, which sought to compel the chairman of the Mississippi Parole Board to either return parolee from Colorado to Mississippi for parole revocation hearing or to hold a revocation hearing in his absence, should be treated as a motion under this section, for relief on grounds his parole was unlawfully revoked, parolee would not be entitled to relief in view of language in § 47-7-27. Bobkoskie v. State, 495 So. 2d 497, 1986 Miss. LEXIS 2680 (Miss. 1986).

Impeachment evidence as well as exculpatory material comes within the scope of the Brady rule; failure to produce does not depend upon the good faith or bad faith of the prosecution, nor upon the specificity of the defense request. Malone v. State, 486 So. 2d 367, 1986 Miss. LEXIS 3139 (Miss. 1986).

2. Evidentiary hearing.

Circuit court did not err in denying appellant postconviction relief (PCR) without an evidentiary hearing because there was no merit to the claim that appellant entitled to relief on the ground his trial attorney failed to advise him of his right to directly appeal his sentence; a defendant who pleaded guilty had to file a PCR motion rather than a direct appeal, and the transcript of the plea hearing revealed appellant was informed of the consequences of pleading guilty. Berry v. State, 230 So. 3d 360, 2017 Miss. App. LEXIS 637 (Miss. Ct. App. 2017).

Circuit court did not err in denying appellant postconviction relief (PCR) without an evidentiary hearing because nothing in the record indicated the circuit court had reason to doubt appellant's competency to plead guilty; appellant failed to raise the issue before the circuit court during the plea hearing, and he later failed to support his assertion through his PCR motion. Berry v. State, 230 So. 3d 360, 2017 Miss. App. LEXIS 637 (Miss. Ct. App. 2017).

Circuit court properly dismissed appellant's postconviction relief motion because appellant's arguments regarding sufficiency of the evidence were rejected by the court of appeals as procedurally barred, and the court of appeals only reversed for the limited purpose of addressing whether appellant was entitled to further DNA testing. Pickle v. State, 203 So. 3d 753, 2016 Miss. App. LEXIS 724 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1151, 2017 Miss. LEXIS 212 (Miss. 2017), cert. denied, — So. 3d —, 2017 Miss. LEXIS 215 (Miss. 2017).

Since record contained no statement from defendant's attorney that contradicted defendant's statement that he asked his attorney to appeal his conviction, an evidentiary hearing was required on defendant's motion under Miss. Code Ann. § 99-39-5 (Rev. 2000) for an extension of time to appeal his conviction. Even though the attorney's agreement to represent the inmate indicated that the representation did not include filing an appeal, the attorney's obligation to file the inmate's appeal was part of his obligation as trial counsel until the attorney received permission to withdraw. Sellers v. State, 52 So. 3d 426, 2011 Miss. App. LEXIS 8 (Miss. Ct. App. 2011).

Trial court did not err in revoking an inmate's probation based on hearsay testimony regarding charges that were later dismissed, as the Mississippi Rules of Evidence, including the hearsay rule, did not apply to probation revocation hearings, and the burden of proof at such a hearing was "more likely than not," rather than "beyond a reasonable doubt." Forshee v. State, 853 So. 2d 136, 2003 Miss. App. LEXIS 471 (Miss. Ct. App. 2003).

Removing defendant from the pretrial intervention program without affording him a hearing did not violate any of his constitutional rights, as he had no right to participate in the program, and his right to a jury trial on the original charges was unaffected by the revocation. Anderson v. State, 795 So. 2d 591, 2001 Miss. App. LEXIS 349 (Miss. Ct. App. 2001).

Circuit court's failure at sentencing hearing to elicit responses from defendant regarding his desire to appeal his case, his understanding of time frame in which he could make appeal and his financial ability to pursue appeal did not entitle defendant to out-of-time appeal, where defense counsel obtained signed witness statement indicating that defendant did not wish to appeal immediately following sentencing hearing, and circuit court conducted full-scale evidentiary hearing as to whether to allow out-of-time appeal. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Defendant's affidavit in post-conviction proceeding, alleging claims that were totally contrary to his sworn testimony given before trial court at time he entered his guilty plea to capital murder, did not require evidentiary hearing, where record was clear as to facts presented to trial court before guilty pleas were accepted, indicating that affidavit was a "sham." Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

Evidentiary hearing was required in post-conviction proceeding to determine whether defendant's attorney failed to inform him of his right to appeal conviction where attorney's response to defendant's petition for out-of-time appeal stated generally that he advised defendant of options and that he specifically advised defendant that district attorney would drop other pending charges if defendant would forego his appeal, and defendant stated only that he was not going to appeal his conviction, but nothing showed that defendant had been informed of his right to appeal. Summerville v. State, 667 So. 2d 14, 1996 Miss. LEXIS 2 (Miss. 1996).

To be entitled to evidentiary hearing on merits of ineffectiveness of counsel claim, defendant must establish prima facie claim on both prongs of Strickland test by alleging with specificity and detail that his counsel's performance was deficient and that the deficient performance prejudiced defense so as to deprive him of fundamentally fair trial. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Evidentiary hearing is not necessary where allegations in petition for post-conviction relief are specific and conclusory. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

A defendant was not entitled to an evidentiary hearing on his motion for post-conviction relief where the petition was time barred under subsection (2) of this section, and the defendant's allegations were insufficient to require the trial court to grant an evidentiary hearing where his claims were based primarily on the allegation that a witness was available to testify that the crime with which the defendant was charged had been committed by another person and that the witness was not available to make an affidavit because the defendant was incarcerated. Campbell v. State, 611 So. 2d 209, 1992 Miss. LEXIS 793 (Miss. 1992).

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

Defendants were not entitled to an evidentiary hearing on their claims that they were denied the right to testify in their own defense at trial, where their claims were based on allegations that they received substantial advice from their attorneys that it would be contrary to their interests to testify and that they were unaware of the right of allocution, but the defendants did not suggest that they ever questioned their attorneys regarding their rights in this regard nor was there any suggestion that the attorneys gave any dubious legal advice on this point. Jaco v. State, 574 So. 2d 625, 1990 Miss. LEXIS 823 (Miss. 1990).

Remand for evidentiary hearing was required on questions of whether plea bargain existed prior to trial and, if it did, whether terms of agreement so affected codefendant's credibility as to undermine confidence in outcome of trial, where defendant alleged that it was not disclosed to him prior to trial that state witness was given most lenient sentence for armed robbery in exchange for his testimony. Malone v. State, 486 So. 2d 367, 1986 Miss. LEXIS 3139 (Miss. 1986).

3. Guilty plea, voluntariness.

Appellant's claim that there was no factual basis for his guilty plea was without merit and was subject to the procedural bars because appellant admitted to all relevant facts, was apprised of the consequences of his guilty plea, and pleaded guilty. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Circuit court did not err in denying appellant postconviction relief (PCR) without an evidentiary hearing because the circuit court properly accepted appellant's guilty plea after finding he voluntarily, knowingly, and intelligently pled guilty; appellant failed to offer any proof to the circuit court, or to attach any affidavits to his PCR motion, to support his self-defense claim. Berry v. State, 230 So. 3d 360, 2017 Miss. App. LEXIS 637 (Miss. Ct. App. 2017).

Trial court did not err in dismissing appellant's motion for postconviction relief because the record reflected a sufficient factual basis in support of appellant's guilty plea and the offense of sexual battery of a child under fourteen years old; appellant testified as to his age at the time of the plea hearing, as well as his birth date, the State's offer of proof provided that the victim was under fourteen years old, and appellant did not contest that offer of proof. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Defendant not receiving a copy of the order denying defendant's motion for reconsideration of the denial of defendant's motion to withdraw defendant's guilty plea was not a cognizable ground for postconviction relief. Dedeaux v. State, 205 So. 3d 697, 2016 Miss. App. LEXIS 313 (Miss. Ct. App.), cert. denied, 205 So. 3d 1083, 2016 Miss. LEXIS 516 (Miss. 2016).

Because defendant filed his postconviction relief motion over three years after entering his guilty plea, any attack on the voluntariness of his plea was time-barred; notwithstanding the time-bar, defendant's claim was without merit as defendant's plea was freely, voluntarily, and intelligently entered because defendant unequivocally acknowledged his understanding of the Alford plea and its consequences during the plea colloquy; he confirmed that his attorney was not making him submit a guilty plea; the prosecutor presented the facts that he was prepared to prove at trial; and defendant stated that after discussing the matter in detail, he was entering his guilty plea freely and voluntarily. Smith v. State, 196 So. 3d 986, 2015 Miss. App. LEXIS 581 (Miss. Ct. App. 2015).

Nothing in the record, nor in appellant's post-conviction relief (PCR) motion, suggested that his guilty plea to statutory rape was not knowingly and voluntarily entered, or that the plea was otherwise invalid. Therefore, the trial court did not err in dismissing appellant's PCR motion as a successive writ. Boyd v. State, 175 So. 3d 59, 2015 Miss. App. LEXIS 152 (Miss.

Ct. App.), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 492 (Miss. 2015).

There was nothing in the record to demonstrate that the circuit court erred in its conclusion that the prisoner was freely, voluntarily, and intelligently made because the circuit judge carefully questioned him about his ability to understand the charges against him, the repercussions of his guilty plea, and his willingness to enter into the plea arrangement. Graham v. State, 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011), vacated, 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

Trial court did not err in denying an inmate's motion for post-conviction relief because the record contained sufficient evidence that the inmate pleaded guilty to culpable-negligence manslaughter, Miss. Code Ann. § 97-3-47, and aggravated assault, Miss. Code Ann. § 97-3-7, with knowledge and understanding of the elements of each crime when the prosecutor's on-the-record statement reiterated the charging language in the indictment and evinced an accurate showing that the inmate was informed of the essential elements of the crimes; factual bases existed for the pleas because there was substantial evidence that the inmate committed the crimes. and through his plea petitions, the inmate was specifically informed of the statutory maximum and minimum punishment that each crime carried. Williams v. State, 31 So. 3d 69, 2010 Miss. App. LEXIS 46 (Miss. Ct. App. 2010).

Post-conviction relief was denied in a case where inmate argued that the circuit court failed to give him the sentence that was included in his plea petition; the fact that the sentence by the circuit court was to be "concurrent" with a shorter sentence in Tennessee did not mean that inmate would not be required to serve his full sentence in Mississippi, and furthermore, the circuit court is not required to follow the recommendation of the State contained in the inmate's plea petition. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

On a motion for postconviction relief based on ineffective assistance of counsel, where inmate offered only his statements alleging the deficiencies of his counsel, which were directly contradictory to his statements made under oath, and where he admitted that the factual bases for the charges were correct, and testified that his counsel reviewed the plea petition with him that he signed and submitted to the trial court, inmate failed to prove any instance of deficiency on the part of his counsel, and, even if there were errors, failed to show with reasonable probability that, but for such errors, the result of his proceeding would have been different. Cherry v. State, 24 So. 3d 1048, 2010 Miss. App. LEXIS 4 (Miss. Ct. App. 2010).

Where appellant was arrested for the sale of cocaine after an undercover officer purchased the cocaine from him, the State complied with Miss. Unif. Cir. & Cty. R. 9.04 by giving a videotape of the transaction to defense counsel who viewed it; the fact that appellant did not view the videotape before entering his guilty plea did not affect the voluntariness of his guilty plea to the sale of cocaine, because the judge informed appellant of the charges against him, the consequences of his plea, and the penalties provided by law, as required by Miss. Unif. Cir. & Cty. R. 8.04(A)(4)(b). Furthermore, the State did not act improperly by withdrawing the plea offer after the deadline passed; therefore, appellant was not entitled to post-conviction relief under the Mississippi Uniform Post-Conviction Relief Act, Miss. Code Ann. § 99-39-5(1)(g). Gray v. State, 29 So. 3d 791, 2009 Miss. App. LEXIS 464 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 139 (Miss. Mar. 11, 2010).

Where appellant pleaded guilty to grand larceny, the trial questioned him about his understanding of the charge and the consequences of entering a guilty plea as required by Miss. Unif. Cir. & Cty. R. 8.04(A)(4); nothing in the record raised a question as to appellant's competence and he failed to show that counsel misrepesented the State's sentencing recommendation. In a postconviction proceeding under Miss. Code Ann. § 99-39-9, the court properly found that his guilty plea was voluntary. Myles v. State, 988 So. 2d 436, 2008 Miss. App. LEXIS 470 (Miss. Ct. App. 2008).

It was not error to deny appellant inmate's motion for post-conviction relief because the inmate's guilty plea was entered voluntarily because (1) the inmate signed and filed a petition to enter a guilty plea, which advised him of his legal and constitutional rights and the consequences of the plea; (2) the trial court took considerable efforts to ensure that the inmate entered his guilty plea voluntarily and intelligently; and (3) there was no evidence in the record that the inmate's plea was induced by coercion, under Miss. Unif. Cir. & Cty. R. 8.04(A)(3). Busby v. State, 994 So. 2d 225, 2008 Miss. App. LEXIS 222 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 672 (Miss. 2008).

Trial court, after reviewing the inmate's criminal file, found that his counsel and the district attorney negotiated a plea bargain in which he would plead guilty to one count of statutory rape and the second count would be retired to the files; thus, the inmate received adequate notification of the applicable sentencing range, and the trial court did not err in accepting the inmate's guilty plea, and therefore the trial court properly denied the inmate's petition for post-conviction relief. Brooks v. State, 953 So. 2d 291, 2007 Miss. App. LEXIS 201 (Miss. Ct. App. 2007).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief because based on the documents signed at the plea hearing and the statements the inmate made in response to the judge's questions, all evidence indicated that the inmate's plea was knowingly and voluntarily made. Boyett v. State, 924 So. 2d 577, 2005 Miss. App. LEXIS 1004 (Miss. Ct. App. 2005).

Where petitioner asserted guilty plea was induced through an unfulfilled promise that the prosecutor would not make a sentencing recommendation and that counsel made misrepresentations that no sentence recommendation would be made, petitioner provided nothing but an unsworn letter from former counsel to support the claim of misrepresentation, and provided the appellate court with no proof that a plea agreement existed; thus, petitioner failed to meet petitioner's burden of establishing a case for post-conviction relief. Jones v. State, 885 So. 2d 83, 2004 Miss. App. LEXIS 487 (Miss. Ct. App.), cert. denied, 883 So. 2d 1180, 2004 Miss. LEXIS 1334 (Miss. 2004).

Defendant claims that defendant's plea was involuntary and that counsel was ineffective were contradicted both by defendant's sworn statements given in defendant's petition to enter a guilty plea, and in front of the trial court at the plea hearing; defendant stated that defendant disclosed all the information relating to the crime to counsel, and that counsel advised defendant of all possible defenses, moreover, defendant had testified under oath that defendant fully understood the consequences of his plea. Any claim of innocence simply could not survive, and the trial court properly denied post-conviction relief. Herrod v. State, 901 So. 2d 635, 2004 Miss. App. LEXIS 274 (Miss. Ct. App. 2004).

Post-conviction relief under Miss. Code Ann. § 99-39-5 was properly denied where the record of the plea hearing refuted an inmate's claims that his guilty plea to armed robbery was made unknowingly and involuntarily and that he wasn't told his plea would be self incriminating. Fairley v. State, 822 So. 2d 1015, 2002 Miss. App. LEXIS 142 (Miss. Ct. App. 2002), rev'd, 2003 Miss. LEXIS 35 (Miss. Jan. 9, 2003).

The defendant was not entitled to post-conviction relief on the ground that he was not advised of his constitutional rights prior to his plea of guilty as the evidence established that the defendant was fully aware of the repercussions of his guilty plea and was well informed about the details of the plea bargain arrangement and, therefore, did plead guilty knowingly, intelligently, and voluntarily. Myers v. State, 767 So. 2d 1058, 2000 Miss. App. LEXIS 439 (Miss. Ct. App. 2000).

If defendant's guilty pleas were involuntary, then not only defendant's sentences, but also his or her guilty pleas, must be vacated, even though defendant only sought to vacate sentences and did not specifically seek to vacate pleas. Courtney v. State, 704 So. 2d 1352, 1997 Miss. App. LEXIS 600 (Miss. Ct. App. 1997).

Defendant's guilty pleas were not "voluntarily" given and, thus, both pleas and defendant's sentence would be vacated;

although defendant, as habitual and subsequent offender, was familiar with criminal justice system, and he was advised by sources other than trial court that he was waiving right to jury trial, right to confront and cross-examine witnesses, and right against self-incrimination, no one, either in open court or in chambers, advised defendant that he could be sentenced to no less than 30-year mandatory sentence without parole, and there was justifiable basis for defendant to believe that, if he cooperated with narcotics task force by working as undercover informant, he could receive sentence of less than statutory minimum. Courtney v. State, 704 So. 2d 1352, 1997 Miss. App. LEXIS 600 (Miss. Ct. App. 1997).

Post-conviction petitioner is entitled to evidentiary hearing if he raises questions of fact regarding counsel's deficiencies or any prejudice resulting therefrom. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

Finding that counsel was ineffective requires remand for new trial. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

Defendant was not prejudiced in post-conviction proceeding when trial court refused to grant his request for transcript of hearing in which he pleaded guilty to capital murder, where record was amended to include transcript of plea proceeding, and affidavit in which defendant challenged voluntariness of his plea was inconsistent with transcript. Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

A defendant's claim that he blindly entered a plea of guilty because his attorney told him that his mother advised him to do so was not sufficient to render his plea involuntary. Smith v. State, 636 So. 2d 1220, 1994 Miss. LEXIS 54 (Miss. 1994).

A trial court's failure to inform a defendant, who pled guilty to possession of cocaine with intent to distribute, that a $1,000.00 fine was the minimum penalty for the crime was harmless error where the record contained the defendant's written waiver of indictment, his petition to enter a plea of guilty, and a 12-page transcript of the circuit judge's interrogation of the defendant before accepting the plea. Eley v. State, 631 So. 2d 787, 1994 Miss. LEXIS 79 (Miss. 1994).

A defendant was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether his guilty plea was entered voluntarily and intelligently where the transcript of the defendant's plea hearing did not reflect that he was advised concerning the rights of which he alleged he was ignorant; the State would be entitled to prove at the evidentiary hearing that the defendant learned of the rights in question, either from the trial judge or from some other source, prior to pleading guilty. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

A circuit court properly summarily dismissed a defendant's post -conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel, where a transcript of the plea hearing showed that the trial court fully informed the defendant of the maximum sentence for the crime charged in the indictment and the effect of the habitual criminal statute if he subsequently committed another crime of violence and that the defendant acknowledged to the court that no one had threatened, abused or mistreated him in any way or promised him anything to cause him to wish to plead guilty, and the defendant did not contend that he lied to the court because of misrepresentations by his attorney. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

A defendant's complaints of ineffective assistance of counsel in his post-conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel were insufficient as a matter of law where the defendant failed to allege that the asserted errors of his attorney proximately resulted in his guilty plea and that, but for these errors, he would not have entered the plea. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

The failure of a trial court to inform the defendant of the minimum and maximum sentences which the court could impose rendered his guilty pleas involuntary and required vacation of the pleas. Mallett v. State, 592 So. 2d 524, 1991 Miss. LEXIS 910 (Miss. 1991).

A defendant's complaint sufficiently stated a claim for post-conviction relief on the ground that his guilty plea was involuntary, and therefore his complaint should not have been dismissed on its face, where the defendant alleged that his attorney told him that he would receive a sentence of less than 12 years if he entered a guilty plea, and the defendant entered a plea of guilty whereupon he was sentenced to 16 years' imprisonment. Although a mere expectation or hope of a lesser sentence than might be meted out after conviction upon a trial by jury will generally not be sufficient to entitle a defendant to relief in such a case, the assurance of a 12-year cap on his sentence constituted a "firm representation" rather than a "mere expectation" of such a lesser sentence, and therefore provided a basis for relief. Myers v. State, 583 So. 2d 174, 1991 Miss. LEXIS 388 (Miss. 1991).

A guilty plea must be made voluntarily in order to satisfy the defendant's constitutional rights. A plea is voluntary if the defendant knows what the elements are of the charge against him or her, including an understanding of the charge and its relation to him or her, what effect the plea will have, and what the possible sentence might be because of the plea. Where a defendant is not informed of the maximum and minimum sentences he or she might receive, his or her guilty plea has not been made either voluntarily or intelligently. A complete record should be made to ensure that the defendant's guilty plea is voluntary. While a transcript of the proceeding is essential, other offers of clear and convincing evidence which prove that the defendant entered a guilty plea voluntarily are sufficient. For example, where an evidentiary hearing has established that a defendant's guilty plea was entered voluntarily, the fact that a record was not made at the time the plea was entered will not be fatal. Wilson v. State, 577 So. 2d 394, 1991 Miss. LEXIS 179 (Miss. 1991).

A petitioner was not entitled to have his guilty pleas set aside on the grounds that they were made involuntarily and without effective assistance of counsel where the petitioner was a college graduate, prior to entering a guilty plea he had a longstanding knowledge of the charges and a notice and understanding of the severity of the charges and should have had an understanding of the severity of the potential punishment, he had the opportunity to consult with his attorney or to consult with any other attorney concerning the charges pending against him, he sought counselling and underwent therapy at a mental health center and had contact with other institutions all of which should have assisted him in intelligently weighing the consequences of the charges and of a plea of guilty, and at the time of entering his plea of guilty, he was specifically asked whether he was satisfied with his attorney's services and responded "very much so"; the petitioner apparently knowingly, willfully, freely, and voluntarily chose to abort his trial by announcing in open court that he desired to change his plea from not guilty to guilty and at that instance raised no complaint about counsel or about the judicial proceedings, and therefore his petition for post-conviction relief would be dismissed. Schmitt v. State, 560 So. 2d 148, 1990 Miss. LEXIS 62 (Miss. 1990). But see Weatherspoon v. State, 736 So. 2d 419, 1999 Miss. App. LEXIS 141 (Miss. Ct. App. 1999).

4. —Explanation of rights.

Circuit court properly dismissed appellant's motion for post-conviction relief because he did not raise any claim that would overcome the procedural bars; appellant's claim that he was not advise of his right to confront witnesses and his right against self-incrimination did not constitute an exception to the bars because appellant indicated that he understood he would be giving up his right to a trial by jury and that he was not threatened or intimidated into entering his guilty plea. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018)

Circuit court properly denied appellant's motion for post-conviction relief based on procedural bars because appellant did not show the violation of a fundamental constitutional right; the motion was filed outside the three-year statute of limitations and was a successive writ, and the failure to inform appellant of his right against self-incrimination did not exempt his motion from procedural bars when he acknowledged that he understood he was giving up certain rights. Boyd v. State, 155 So. 3d 914, 2014 Miss. App. LEXIS 489 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 201 (Miss. 2015), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 200 (Miss. 2015).

Because inmate was informed by the court, prior to his guilty plea, of all the elements of the crime of robbery with a deadly weapon under § 97-3-79, and that a B.B. gun constituted a "deadly weapon," his claim on appeal that his plea was involuntary and unintelligent was without merit. Cherry v. State, 24 So. 3d 1048, 2010 Miss. App. LEXIS 4 (Miss. Ct. App. 2010).

In advising defendant of consequences of guilty plea, it is not sufficient for court to merely ask defendant generally if his or her constitutional rights have been explained, nor is it sufficient to simply have defendant sign printed form advising court that defendant has been sufficiently advised of his or her rights; rather, court must go further and determine in face-to-face exchange in open court that the accused knows and understands rights to which he or she is entitled. Courtney v. State, 704 So. 2d 1352, 1997 Miss. App. LEXIS 600 (Miss. Ct. App. 1997).

Requirement that judge inquire and determine that accused understands maximum and minimum penalties provided by law prior to accepting guilty plea means that judge must advise defendant of minimum number of years of imprisonment specified by statute pursuant to which defendant is being sentenced, if any such minimum number of years is provided; where statute specifies no minimum number of years of imprisonment, judge is not obligated to inform defendant that no minimum sentence is provided, or that minimum penalty defendant faces is "zero." Bevill v. State, 669 So. 2d 14, 1996 Miss. LEXIS 70 (Miss. 1996).

A trial court's failure to inform a defendant of the mandatory minimum sentence for the crime charged did not render the defendant's guilty plea involuntary where no misrepresentation as to the mandatory minimum sentence was made to the defendant, he did not expect to receive the mandatory minimum sentence, he did not claim that there was a misrepresentation of the sentence which he was to receive, he was fully apprised and understood the consequences of the sentence the State intended to recommend, and he did not allege that the failure to be informed of the minimum sentence induced him to enter his guilty plea. Smith v. State, 636 So. 2d 1220, 1994 Miss. LEXIS 54 (Miss. 1994).

A circuit court properly summarily denied a defendant's post-conviction relief motion to vacate his murder conviction on the ground that his guilty plea was not made knowingly and intelligently and was devoid of a factual basis, even though the defendant did not admit outright that the killing of the victim was malicious, where the defendant struck the victim twice with the butt of a gun during an altercation and continued to knock the victim down each time he pulled himself up, and there was nothing in the record to suggest that the defendant was offered any hope of reward for entering his plea of guilty or that he was coerced, threatened or intimidated into making it, but, to the contrary, the circuit court interrogated the defendant thoroughly and carefully explained to him the full gamut of constitutional protections available to him as well as the ramifications of entering a guilty plea. Lott v. State, 597 So. 2d 627, 1992 Miss. LEXIS 149 (Miss. 1992).

A defendant who pleaded guilty without an affirmative expression by the trial court informing him that by pleading guilty he waived his constitutional right against self-incrimination, was entitled to an evidentiary hearing on the issue of whether his guilty plea was involuntarily and unintelligently made. Although the defendant's petition to the court to accept his plea of guilty recited that there was "no constitutional right or reason why this court should not accept this plea and enter sentence thereon," this was not sufficient to show that he was advised or informed of his constitutional right against self-incrimination. Horton v. State, 584 So. 2d 764, 1991 Miss. LEXIS 459 (Miss. 1991).

Before a person may plead guilty to a felony, he or she must be informed of his or her rights, the nature and consequences of the act he or she contemplates, and any other relevant facts and circumstances. Thus, a defendant who was not advised of the mandatory minimum sentence for the charge to which he was pleading, and who was ignorant of the mandatory minimum sentence at the time he plead guilty, was entitled to withdraw his plea of guilty, enter a plea of not guilty and be given a trial, since the failure to advise the defendant of the minimum penalty rendered his guilty plea involuntary as a matter of law. Vittitoe v. State, 556 So. 2d 1062, 1990 Miss. LEXIS 39 (Miss. 1990).

5. Ineffective assistance of counsel.

Petitioner's claims of ineffective assistance of trial counsel were raised and rejected in the initial post-conviction relief proceedings, and thus, the claims in his second petition were untimely and successive and barred by res judicata. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's claim that trial counsel were ineffective for failing to prepare an inmate's testimony failed on the merits because the decision not to cross-examine the inmate was defensible trial strategy, especially when the marginal benefit of any questioning about the jailhouse record was considered; petitioner did not show that the trial attorneys' performance was deficient, and he did not show prejudice. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner failed to show that counsel's performance was deficient for not interviewing witnesses because the affidavits were largely hearsay; counsel was not ineffective for failing to investigate a witness's reputation because trial counsel sufficiently showed that the witness was not reputable, and calling additional witnesses to attack his reputation would have been unnecessarily repetitive. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Counsel's performance was not deficient for failure to object to notes purportedly written by a witness to petition while they were in jail because other letters between petitioner and the witness had already been admitted; defense counsel did in fact object to the introduction of the first note, but it was admitted over the objection. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Trial counsel was not ineffective for failing to object to certain parts of the prosecutor's closing argument because there was no error in the argument; the prosecutor did not improperly comment on the victim or the victim's family, and thus, any objection would have been fruitless. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner did not show that his trial attorneys were ineffective in their presentation of mitigation evidence at the sentencing phase because much of the information submitted by affidavit was in fact discussed at the hearing; some of the allegations were contradicted by other testimony. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petitioner's ineffective-assistance-of-post-conviction-counsel claim therefore failed to meet the second Strickland prong because a thorough review of all of the claims raised in the successive petition revealed none that had merit; thus, even if post-conviction counsel had raised any or all of the claims, the result would have been the same. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Because appellant brought a claim of ineffective assistance of counsel in his first post-conviction relief motion, the claim was barred by res judicata. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Circuit court properly dismissed appellant's motion for post-conviction relief because he did not raise any claim that would overcome the procedural bars; nothing in the record support appellant's claim of ineffective assistance of counsel because there was a sufficient factual basis for his guilty plea, and in entering his guilty plea, appellant expressed to the circuit court that he was satisfied with his counsel's performance. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Petitioner waived his claim that his trial counsel was ineffective for failing to file a motion to dismiss based on a violation of his right to a speedy trial because that claim did not relate to the voluntariness of the entry of his guilty plea; petitioner pleaded guilty, and his plea petition stated that he was waiving his right to a speedy and public trial by jury. Bardney v. State, 236 So. 3d 825, 2017 Miss. App. LEXIS 545 (Miss. Ct. App. 2017).

Because a postconviction relief motion following a guilty plea was untimely unless it was filed within three years after entry of the judgment of conviction, and the Uniform Post-Conviction Collateral Relief Act's procedural bars applied to postconviction-relief claims based on ineffective assistance of counsel, defendant's ineffective-assistance claim was time-barred; notwithstanding the time-bar, defendant's claims were meritless because, inter alia, he did not assert that but for his attorney's alleged misrepresentation, he would have insisted on proceeding to trial rather than enter his guilty plea; and he could not genuinely say that he did not realize that any sentence upon revocation of his probation could potentially be day-for-day. Smith v. State, 196 So. 3d 986, 2015 Miss. App. LEXIS 581 (Miss. Ct. App. 2015).

Defendant's allegation of ineffective assistance of counsel was without foundation because (1) defendant's grounds concerned trial strategy, which was within counsel's discretion, and counsel's choices were not unreasonable and were sound trial strategy that could only have helped defendant; and (2) defendant failed to demonstrate how any of defendant's grounds for defendant's ineffective assistance of counsel claim had a prejudicial effect. Thus, defendant failed to show that defendant was denied a fair trial. Pittman v. State, 121 So. 3d 253, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. 2013).

Inmate's ineffective assistance claim failed as: (1) the claim was time-barred under Miss. Code Ann. § 99-39-5(2); (2) the inmate had entered a best interests plea and did not show that but for counsel's errors, he would have insisted on going to trial; (3) the inmate did not deny that he was the driver of the vehicle or that he injured the three victims; (4) with his attorney's help, he was able to enter a best interest plea to one of three aggravated assault charges, and his possible 60-year sentence under Miss. Code Ann. § 97-3-7(2)(a) was reduced to a possible 20-year sentence, of which 18 years and 10 months were post-release supervision; and (5) the inmate was ordered to serve the time he had served while awaiting sentencing, and the sentence effectively released him from prison immediately to start his post-release supervision. Sims v. State, 134 So. 3d 317, 2013 Miss. App. LEXIS 102 (Miss. Ct. App. 2013), aff'd, 134 So. 3d 300, 2014 Miss. LEXIS 161 (Miss. 2014).

Appellant's post-conviction relief motion was properly denied on the merits because the trial court did not clearly err in finding that all of appellant's examples of alleged ineffective assistance did not meet the two-part test of Strickland; the trial court did not err in holding that any attack counsel could have made on a police officer's credibility would not have affected the outcome of the trial. Brandon v. State, 108 So. 3d 999, 2013 Miss. App. LEXIS 67 (Miss. Ct. App. 2013).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his argument that he received the ineffective assistance of counsel due to trial counsel's failure to develop and present mitigation evidence was raised in his first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred under Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Notwithstanding the bar, the inmate's trial counsel presented evidence at the sentencing hearing of the inmate's age, his poverty-stricken upbringing, his violent and abusive father, his relationship with his three-year-old son and his academic problems; the inmate failed to show that trial counsel's failure to present further evidence caused him prejudice. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his argument that he received ineffective assistance of counsel due to trial counsel's waiver of objection to the State's peremptory strikes of jurors under Batson was raised in the inmate's first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred pursuant to Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Notwithstanding the bar, the inmate's trial counsel presented no evidence of prejudice to the inmate other than speculation due to the racial composition of the inmate's jury, and therefore, the issue was without merit. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his claim that he received the ineffective assistance of counsel due to trial counsel's failure to properly investigate and present his alibi defense was raised in his first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred pursuant to Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Further, the issue was without merit because the decision not to present evidence of an alibi was acceptable trial strategy. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Prisoner did not properly supported his claim of ineffective assistance of counsel in support of his motion for postconviction relief because he was fully advised by the circuit court as to the consequences of his guilty plea and he knowingly and intelligently admitted to the charge against him, which included the possession of cocaine. Graham v. State, 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011), vacated, 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

Defendant's petition, styled as a petition to show cause, was clearly one for post-conviction relief pursuant to Miss. Code Ann. § 99-39-5(1) where defendant alleged the denial of effective assistance of counsel because the Mississippi Legislature had failed to adequately fund the public defender's office. Wardley v. State, 37 So. 3d 1222, 2010 Miss. App. LEXIS 136 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 499 (Miss. 2010).

Post-conviction relief was denied where inmate provided no proof, other than his own affidavit, that his counsel rendered ineffective assistance; the inmate's only claim of prejudice was that he entered a guilty plea as a result of his counsel's conduct, but the inmate's signed plea petition stated that he was fully satisfied with the competent advice and help of his counsel, and the inmate stated under oath that he was satisfied with the services rendered by his counsel and that he had no complaints whatsoever about his representation. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Dismissal of an inmate's motion for post-conviction relief was affirmed because the inmate's suspended sentence was not unlawfully revoked as the inmate violated a condition of the suspended sentence, the legality of his sentence could not be attacked after the inmate violated its conditions, and counsel's performance was not ineffective as the inmate had stated he was satisfied with counsel's services, counsel obtained a lenient sentence, and the inmate did not present any evidence of prejudice. Mackey v. State, 37 So. 3d 1193, 2009 Miss. App. LEXIS 184 (Miss. Ct. App. 2009), rev'd, 37 So. 3d 1161, 2010 Miss. LEXIS 284 (Miss. 2010).

Although defendant argued that trial counsel was ineffective for failing to request an instruction telling the jury to regard a witness's testimony as an accomplice with heightened scrutiny, the court did not need to reach a disposition of this issue because the record was not ripe for review of this contention, and thus, the court affirmed without prejudice to defendant's right to raise this issue in post-conviction proceedings; there was no stipulation to the adequacy of the record by the State, post-conviction proceedings might give counsel a fair change to explain the lack of the instruction, and while normally it would be standard practice for counsel to request the instruction, on the record the court could not find that the absence of the instruction equated to ineffective assistance. Thompson v. State, 995 So. 2d 831, 2008 Miss. App. LEXIS 522 (Miss. Ct. App. 2008).

Appellant inmate's motion for post-conviction relief was properly denied because the inmate could not demonstrate that, in allowing appellee State to amend an indictment to charge him as a habitual offender, the performance of his counsel was deficient because the inmate received a favorable recommendation from the State in exchange for his plea, the record indicated that the inmate signed a written waiver acknowledging that he was pleading guilty as a habitual offender under the amended indictment, and the circuit judge confirmed that fact with the inmate in their plea colloquy before he allowed the inmate to enter his guilty plea. Jones v. State, 994 So. 2d 829, 2008 Miss. App. LEXIS 227 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 659 (Miss. 2008).

It was not error to deny appellant inmate's motion for post-conviction relief because the inmate's ineffective assistance of counsel claim failed because the inmate did not show that he received deficient advice which prejudiced his defense because, while the inmate argued that his trial counsel failed to explain that he had to surrender himself to authorities on the day he entered his plea, counsel provided competent and reasonable professional assistance during all stages of the guilty plea proceedings, and the mere fact that the inmate was confused about whether he had to surrender himself to authorities as soon as he entered his guilty plea was of no consequence. Busby v. State, 994 So. 2d 225, 2008 Miss. App. LEXIS 222 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 672 (Miss. 2008).

Where appellant entered a guilty plea to conspiracy to commit capital murder, he was not entitled to post-conviction relief under Miss. Code Ann. § 99-39-5 based on his ineffective assistance of counsel claim. Appellant admitted his guilt and stated that he was satisfied with the services of his two attorneys; the twenty-year sentence that appellant received was that mandated by the Mississippi Legislature. Payne v. State, 977 So. 2d 1238, 2008 Miss. App. LEXIS 174 (Miss. Ct. App. 2008).

Because an inmate offered only his own statement as proof of the claim of ineffective assistance, the inmate failed to meet his burden of showing that counsel was deficient or that the inmate was prejudiced. Sneed v. State, 990 So. 2d 226, 2008 Miss. App. LEXIS 136 (Miss. Ct. App.), cert. denied, 994 So. 2d 186, 2008 Miss. LEXIS 468 (Miss. 2008).

Post-conviction relief was denied in a case where defendant entered a guilty plea to sexual offenses because he did not receive ineffective assistance of counsel; the decision to submit him to a mental evaluation prior to the entry of a plea rested with the judge, there was no failure to investigate or interview witnesses where the information was provided to the defense, the information provided did not rise to the level exculpatory evidence, and defense counsel did not misrepresent the sentence to defendant's parents. McNeal v. State, 951 So. 2d 615, 2007 Miss. App. LEXIS 139 (Miss. Ct. App. 2007).

Parties did not stipulate that the record was adequate to allow the appellate court to make the finding of ineffective assistance of counsel without consideration of the findings of fact of the trial judge, and the record did not affirmatively show ineffectiveness of constitutional dimensions; accordingly, defendant could raise his ineffective assistance of counsel claim in a post-conviction relief proceeding. Terrell v. State, 952 So. 2d 998, 2006 Miss. App. LEXIS 816 (Miss. Ct. App. 2006).

Where defendant waited six years to file a motion for post-conviction relief, counsel's ineffective assistance in pursuing a speedy trial claim was not an exception to the time bar. Defendant failed to show actual prejudice that may have denied him any fundamental constitutional rights. Thomas v. State, 933 So. 2d 995, 2006 Miss. App. LEXIS 80 (Miss. Ct. App.), cert. denied, 933 So. 2d 982, 2006 Miss. LEXIS 372 (Miss. 2006).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief as the inmate did not establish that he was deprived of effective assistance of counsel during his plea hearing, because his mother and his sister testified that the inmate's attorney had told him that he would be pleading guilty to simple assault and would be sentenced to time served, and that testimony directly contradicted the inmate's testimony at the actual plea hearing where he acknowledged that he was pleading guilty to aggravated assault. Riggs v. State, 912 So. 2d 162, 2005 Miss. App. LEXIS 712 (Miss. Ct. App. 2005).

Denial of an inmate's motion for post-conviction relief was affirmed as the inmate's claim that his guilty plea was not knowing and voluntary due to his counsel's alleged deficient performance was contradicted by the inmate's statements at the plea hearing that he understood the consequences of his plea and was satisfied with his counsel's performance. Gonzales v. State, 915 So. 2d 1108, 2005 Miss. App. LEXIS 1001 (Miss. Ct. App. 2005).

Mississippi Supreme Court has not held that merely raising a claim of ineffective assistance of counsel in a post-conviction application is sufficient to surmount the time bar of Miss. Code Ann. § 99-39-5(2). Chancy v. State, 938 So. 2d 267, 2005 Miss. App. LEXIS 920 (Miss. Ct. App. 2005), aff'd, 938 So. 2d 251, 2006 Miss. LEXIS 486 (Miss. 2006).

Denial of the inmate's motion for post-conviction relief was proper pursuant to Miss. Code Ann. § 99-39-5(1)(e) where his counsel was not ineffective for refusing to interview witnesses because the attorney believed that their testimony was perjured testimony. Johns v. State, 925 So. 2d 840, 2005 Miss. App. LEXIS 65 (Miss. Ct. App. 2005), rev'd, 926 So. 2d 188, 2006 Miss. LEXIS 180 (Miss. 2006).

Inmate's post-conviction claim that his counsel was ineffective, filed over five years after his guilty plea, was procedurally barred pursuant to Miss. Code Ann. § 99-39-5(2), notwithstanding his claim that an ineffective assistance of counsel claim was a fundamental right that was not barred. Forshee v. State, 853 So. 2d 136, 2003 Miss. App. LEXIS 471 (Miss. Ct. App. 2003).

No support existed for the defendant's post-conviction claim that he was denied the effective assistance of counsel due to his counsel's failure to fully investigate the facts of the defendant's case and explore the possibility that various purported witnesses could have provided evidence tending to absolve the defendant from guilt; the defendant failed to show that any witnesses who could exonerate him existed and that the unavailability of potentially favorable witnesses was due to the defense counsel's failure to adequately pursue this avenue of defense. Davidson v. State, 850 So. 2d 158, 2003 Miss. App. LEXIS 493 (Miss. Ct. App. 2003).

Inmate's application for post-conviction relief was denied as the claims were without merit, barred by the doctrine of res judicata, procedurally barred as a successive writ under Miss. Code Ann. § 99-39-27(9), and time barred pursuant to Miss. Code Ann. § 99-39-5(2); the inmate had already raised the argument of the "intervening decision," had not presented any new evidence that was not reasonably discoverable at trial or that would have caused a different result if introduced, nor had the inmate provided evidence of any violation of any fundamental rights, the inmate failed to demonstrate that the claims were not procedurally barred pursuant to Miss. Code Ann. § 99-39-21(6), and failed to prove ineffective assistance of counsel. Wiley v. State, 842 So. 2d 1280, 2003 Miss. LEXIS 187 (Miss. 2003).

Defense counsel's failure to file appeal, to advise defendant of 30-day time period in which appeal was required to be filed, and to file motion for out-of-time appeal was not ineffective assistance of counsel in murder case, where defendant had signed statement showing that he had been advised of his right to appeal and did not desire to do so. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Supreme Court looks at totality of circumstances to determine whether counsel's efforts were both deficient and prejudicial, when evaluating claim of ineffective assistance of counsel. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

There is strong but rebuttable presumption that counsel's conduct falls within wide range of reasonable professional assistance; only where it is reasonably probable that but for attorney's errors, outcome of trial would have been different, will Supreme Court find that counsel's performance was deficient. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Defense counsel did not provide ineffective assistance of counsel to capital murder defendant at sentencing phase by failing to provide jury psychological report prepared by neutral expert, and instead providing school records, to demonstrate defendant's limited intelligence level, or by failing to conduct further investigation into defendant's mental state; report indicated defendant had capacity to conform his behavior to requirements of law, admitting such damaging document into evidence would leave jury with impression defendant knew right from wrong and could not care less about his actions or consequences thereof and would defeat defense strategy that others convinced defendant to rob store clerk, and that his feeble mind was too weak not to succumb to influence of others, and parental pleas and school transcripts were best argument counsel could make. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

In any ineffectiveness of counsel case, particular decision not to investigate must be directly assessed for reasonableness in all circumstances, applying heavy measure of deference to counsel's judgment. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Defense counsel did not provide ineffective assistance of counsel to capital murder defendant at sentencing phase by failing to present more witnesses than defendant's parents as to defendant's upbringing, childhood, and dysfunctional family life, despite contention that had counsel inquired more into his past and shown that father was alcoholic, jury would have understood traumatic childhood for mitigation purposes; explanation by friends and family of defendant's alcoholism history could have led jury to infer high tolerance level and not to credit 12 beers consumed by defendant before crime as being enough to intoxicate such a hard drinker, and counsel made reasonable, strategic decisions to present most persuasive evidence in mitigation and to cease investigation when results were no longer helpful. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

When there is no showing that interviewing additional witnesses would produce different outcome, post-conviction relief petitioner has failed to show that he was denied right to effective assistance of counsel. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Seventeen-year-old capital murder defendant was procedurally barred by res judicata from arguing in application for post-conviction collateral relief that death penalty was unconstitutional due to lack of particularized finding by circuit court in retaining original jurisdiction over defendant and not transferring him to youth court, as issue had already been challenged on direct appeal, and defendant had merely camouflaged issue by couching claim as ineffective assistance of counsel. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant's appellate counsel did not provide ineffective assistance in failing to raise on appeal issue of whether defendant's proposed instruction on manslaughter was improperly denied; instructions that were given, read as a whole, presented both subject theories of manslaughter and, because law was so thoroughly covered, defendant's appellate attorneys were completely reasonable for not bickering over some obscure jury instruction being denied. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Where defendant had meaningful opportunity to raise issue of ineffective trial counsel on direct appeal and showed neither cause nor actual prejudice, he was procedurally barred by waiver from asserting it through petition for post-conviction relief. Moore v. State, 676 So. 2d 244, 1996 Miss. LEXIS 328 (Miss. 1996).

Counsel was not ineffective for failing to object to the absence of the word "knowing" in indictment for aggravated assault which charged that defendant wilfully and feloniously caused serious bodily injury. Moore v. State, 676 So. 2d 244, 1996 Miss. LEXIS 328 (Miss. 1996).

To be entitled to evidentiary hearing on claim of ineffective assistance of counsel, petitioner must allege with specificity and detail that counsel's performance was deficient and that deficient performance so prejudiced his defense so as to deprive him of a fair trial. Moore v. State, 676 So. 2d 244, 1996 Miss. LEXIS 328 (Miss. 1996).

Counsel for capital murder defendant was not ineffective for failing to investigate and develop fact of defendant's low intelligence quotient, where absence of that evidence did not reasonably undermine confidence in outcome of trial, in that it was merely additional evidence of defendant's mental aptitude, since counsel argued that defendant had very minimal education and deprived childhood. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to request continuance after prosecution called so-called "surprise" witness who subsequently identified defendant, where counsel interviewed witness for 25 minutes during recess called specifically for that purpose, and defendant showed nothing that continuance would have further gained. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to file certain motions, call certain witnesses, ask certain questions, and make certain objections, where counsel's actions fell within ambit of trial strategy. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to request continuance after State introduced into evidence during sentencing phase 2 prior convictions for manslaughter and attempted rape, where there was no prejudice to defendant, in that the prior convictions were valid and not subject to collateral attack. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to object to transitional jury instruction stating that jury should not consider instruction defining lesser included offense of murder unless it found that defendant was not guilty of capital murder, where defendant was granted lesser included offense instruction defining crime of murder less than capital, and defendant showed no prejudice flowing from transitional instruction. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to object to introduction of defendant's prior convictions of grand larceny and simple robbery, where both were relevant to aggravating circumstances set forth under capital sentencing statute, and thus objection would have been futile. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to make offer of proof concerning excluded mitigation-of-sentence testimony about defendant's religious convictions and effect on him of death of his stepchild, where the evidence was adequately established via testimony of other witnesses. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for failing to object to jury instruction that the murder was "especially heinous, atrocious and cruel," where, at time of trial, there was no viable basis under state law for objecting to this instruction. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Counsel for capital murder defendant was not ineffective for conducting cross-examination of witness that produced responses which allegedly strongly suggested to jury that defendant could not be rehabilitated, where most of the cross-examination was in abstract and was not related directly to defendant, and defendant had previous convictions for rape, manslaughter, robbery and grand larceny based upon which jury could have easily reached conclusion that there was little hope for defendant's rehabilitation. Cole v.

State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

The rule that the death of a defendant who has perfected his or her right to appeal does not render the appeal moot applies to petitions for rehearing or when a defendant dies pending appeal from a denial of post-conviction relief; however, if a defendant dies pending application to the Supreme Court for leave to proceed in trial court on post-conviction relief grounds, the application will be deemed moot and the conviction will remain intact. Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

A defendant's complaints of ineffective assistance of counsel in his post-conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel were insufficient as a matter of law where the defendant failed to allege that the asserted errors of his attorney proximately resulted in his guilty plea and that, but for these errors, he would not have entered the plea. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

A defendant's complaint sufficiently stated a claim for post-conviction relief on the ground that his guilty plea was involuntary, and therefore his complaint should not have been dismissed on its face, where the defendant alleged that his attorney told him that he would receive a sentence of less than 12 years if he entered a guilty plea, and the defendant entered a plea of guilty whereupon he was sentenced to 16 years' imprisonment. Although a mere expectation or hope of a lesser sentence than might be meted out after conviction upon a trial by jury will generally not be sufficient to entitle a defendant to relief in such a case, the assurance of a 12-year cap on his sentence constituted a "firm representation" rather than a "mere expectation" of such a lesser sentence, and therefore provided a basis for relief. Myers v. State, 583 So. 2d 174, 1991 Miss. LEXIS 388 (Miss. 1991).

A capital murder defendant was not denied effective assistance of counsel on direct appeal by his attorney's alleged failure to bring to the Supreme Court's attention a plea bargain with an accomplice who testified as a witness, where the Supreme Court was well aware that the accomplice had been permitted to plead guilty to manslaughter and that he had been sentenced to 15 years' imprisonment but had served only 21/2 years. Culberson v. State, 580 So. 2d 1136, 1990 Miss. LEXIS 428 (Miss. 1990), cert. denied, 502 U.S. 943, 112 S. Ct. 383, 116 L. Ed. 2d 334, 1991 U.S. LEXIS 6278 (U.S. 1991).

A defendant was not denied his right to effective assistance of counsel on the ground that his attorney gave the prosecution permission to interview the defense witnesses while allowing the prosecution to disallow the defendant from taking a deposition of the victim, since the defendant had no right to such a pre-trial deposition and the trial court lacked the authority to require the victim to talk with defense counsel where the victim was unwilling to do so; the defendant's counsel could not be faulted as ineffective for failing to secure that which the defendant had no right to obtain. Jordan v. State, 577 So. 2d 368, 1990 Miss. LEXIS 785 (Miss. 1990).

A defense attorney's failure to object when a prosecution witness, who was a nurse, was sent into the jury room to attend to a juror who had become ill, did not constitute ineffective assistance of counsel where no allegation or facts were presented as to how the attorney's failure to object resulted in any significant prejudice to the defendant at his trial. Jordan v. State, 577 So. 2d 368, 1990 Miss. LEXIS 785 (Miss. 1990).

A defendant was not denied his right to effective assistance of counsel merely because his attorney failed to procure a preliminary hearing where no allegation or facts were presented as to the way in which this matter operated to the defendant's prejudice. Jordan v. State, 577 So. 2d 368, 1990 Miss. LEXIS 785 (Miss. 1990).

A defendant's post-conviction claim of ineffective assistance of counsel, which was based on allegations that the defendant's counsel failed to object to allegedly defective indictments and erroneously advised the defendant to plead guilty, was properly dismissed without the benefit of an evidentiary hearing because it was manifestly without merit where the defendant failed to allege with the "specificity and detail" required that his counsel's performance was deficient and that the deficient performance prejudiced the defense, the facts alleged and the brief submitted were not supported by any affidavits other than his own, the indictments were not defective and therefore the defendant's counsel could not be faulted for failing to challenge their validity, and the defendant failed to identify the "deficient and erroneous advice" of his counsel that allegedly resulted in his pleas of guilty. Brooks v. State, 573 So. 2d 1350, 1990 Miss. LEXIS 776 (Miss. 1990).

A petitioner was not entitled to have his guilty pleas set aside on the grounds that they were made involuntarily and without effective assistance of counsel where the petitioner was a college graduate, prior to entering a guilty plea he had a longstanding knowledge of the charges and a notice and understanding of the severity of the charges and should have had an understanding of the severity of the potential punishment, he had the opportunity to consult with his attorney or to consult with any other attorney concerning the charges pending against him, he sought counselling and underwent therapy at a mental health center and had contact with other institutions all of which should have assisted him in intelligently weighing the consequences of the charges and of a plea of guilty, and at the time of entering his plea of guilty, he was specifically asked whether he was satisfied with his attorney's services and responded "very much so"; the petitioner apparently knowingly, willfully, freely, and voluntarily chose to abort his trial by announcing in open court that he desired to change his plea from not guilty to guilty and at that instance raised no complaint about counsel or about the judicial proceedings, and therefore his petition for post-conviction relief would be dismissed. Schmitt v. State, 560 So. 2d 148, 1990 Miss. LEXIS 62 (Miss. 1990). But see Weatherspoon v. State, 736 So. 2d 419, 1999 Miss. App. LEXIS 141 (Miss. Ct. App. 1999).

Defense counsel's failure to inform state trial court of sentencing alternatives under State Youth Court Law (Miss Code Anno §§ 43-21-101 et seq.) for minor convicted of murder, constituted ineffective assistance of counsel requiring grant of writ of habeas corpus for inmate's release unless inmate is resentenced, however, new trial to remedy trial counsel's failure to inform trial court of sentencing alternatives is not required. Burley v. Cabana, 818 F.2d 414, 1987 U.S. App. LEXIS 6991 (5th Cir. Miss. 1987).

6. —Conflict of interest.

Any claim as to an attorney's conflict of interest could have been raised before the trial judge, in the direct appeal, or in the first post-conviction petition, and thus, the issue was waived; petitioner pointed to nothing in the record that an attorney who had been appointed to represent an inmate filed any pleading or attended any court proceeding on his behalf, and he was also represented by an unconflicted attorney during the brief period of that attorney's appointment. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Circuit court properly dismissed a motion for post-conviction relief by a defendant who claimed that his attorney's representation of a third party was a conflict of interest because: (1) there was nothing in the record to indicate that defendant and the third party were charged as codefendants; (2) the fact that defendant's attorney or his firm was representing the third party, possibly on an unrelated charge, at the same time that he was representing defendant, without more, did not create a conflict of interest for the attorney; and (3) defendant did not show that he would have insisted on going to trial were it not for the attorney's alleged conflict of interest, and thus he failed to demonstrate prejudice. Moore v. State, 985 So. 2d 365, 2008 Miss. App. LEXIS 364 (Miss. Ct. App. 2008).

Mere fact that counsel for capital murder defendant shared office space with prosecutor who prosecuted defendant's preliminary hearing was not sufficient to demonstrate actual conflict of interest causing prejudice to defendant in violation of defendant's right to counsel. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

The right to effective assistance of counsel encompasses 2 broad principals-minimum competence and loyal assistance. The right to conflict free counsel is attendant to the Sixth Amendment right to effective assistance of counsel. It is incumbent upon courts which confront and which are alerted to possible conflicts of interest to take the necessary steps to ascertain whether the conflict warrants separate counsel. Thus, where a defense attorney represented 2 codefendants during the sentencing phase of the judicial proceedings and it could easily have been anticipated that the attorney would argue that the actions of one of the codefendants should not be attributed to the other or that the attorney would opt to not say or do anything in litigation for fear that to do so would characterize one codefendant as being more culpable than the other, the failure of the trial court to disclose to the codefendants the potential dangers of joint representation by counsel laboring under a conflict resulted in a violation of the right to effective assistance of counsel, and therefore a new sentencing hearing was warranted. Armstrong v. State, 573 So. 2d 1329, 1990 Miss. LEXIS 824 (Miss. 1990).

Motion of petitioner under death sentence to vacate or set aside judgment and sentence on the ground of ineffective assistance of trial counsel due to fact that same counsel represented petitioner and 2 others would be denied in absence of showing of any instance where any of the 3 were in any adversarial or conflicting position during or as a result of the joint representation during either the guilt or sentencing phase of the trial. Stringer v. State, 485 So. 2d 274, 1986 Miss. LEXIS 2335 (Miss.), cert. denied, 479 U.S. 922, 107 S. Ct. 327, 93 L. Ed. 2d 300, 1986 U.S. LEXIS 4431 (U.S. 1986).

7. Newly discovered evidence.

Regardless of whether some or all of appellant's evidence was "new," the trial court considered all of the evidence, and its finding that it would not probably produce a different result in a new trial was not clearly erroneous, and it properly denied appellant's post-conviction relief (PRC) motion; with respect to whether short falls could cause fatal injuries, the testimony at the PCR hearing was not materially different from the trial testimony. Shelby v. State, — So. 3d —, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. Aug. 4, 2020).

Trial court did not clearly err by finding that the testimony of appellant's experts would not probably produce a different result because the evidence at the post-conviction relief hearing indicated that a majority of practicing physicians continue to accept "shaken baby syndrome" (SBS) or abusive head trauma (AHT) as valid diagnoses; the "debate" and "difference of opinion" regarding SBS and AHT existed at the time of Shelby's trial. Shelby v. State, — So. 3d —, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. Aug. 4, 2020).

Defendant's allegation of newly discovered evidence was without foundation because (1) defendant simply made a new argument as to why defendant believed that the evidence presented at trial by the State of Mississippi was insufficient to sustain defendant's convictions; (2) defendant failed to explain why the evidence could not have been discovered before the original trial through the exercise of due diligence. Pittman v. State, 121 So. 3d 253, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. 2013).

Exception in Miss. Code Ann. § 99-39-5(1)(e) to the requirement that a petition for post-conviction relief be filed within three years after a guilty plea did not apply to defendant's case because, (1) when defendant alleged the police promised defendant a lesser sentence, defendant submitted no evidence apart from defendant's allegations to support the claim, and (2) any such evidence would have been available to defendant when defendant pled guilty. Clark v. State, 54 So. 3d 304, 2011 Miss. App. LEXIS 15 (Miss. Ct. App. 2011).

Inmate's post-conviction relief motion was properly dismissed because the evidence the inmate deemed newly discovered had already been presented, could have been presented, or was already within her knowledge during prior proceedings, and thus the Miss. Code Ann. § 99-39-5(2)(a)(i) newly-discovered-evidence exception did not apply, and the motion was time-barred. Hannah v. State, 49 So. 3d 654, 2010 Miss. App. LEXIS 665 (Miss. Ct. App. 2010).

Motion for post-conviction relief was not time barred in a case involving aggravated assault and robbery due to the scope of leave to proceed granted by the Mississippi Supreme Court, which must have determined that the petition was not procedurally barred on its face; moreover, newly discovered evidence could also have overcome the successive writ and procedural bar. State v. Bass, 4 So. 3d 353, 2008 Miss. App. LEXIS 85 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 113 (Miss. Mar. 12, 2009).

In a case involving aggravated assault and robbery, post-conviction relief was properly granted and a new trial was ordered based on newly discovered evidence under Miss. Code Ann. § 99-39-5(2) where a witness, who identified appellee inmate as a person running from a convenience store after the crimes, later recanted and was shown to have serious mental problems. All of the newly discovered evidence together required a new trial. State v. Bass, 4 So. 3d 353, 2008 Miss. App. LEXIS 85 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 113 (Miss. Mar. 12, 2009).

Defendant, who was sentenced to 15 years for felony child abuse, did not meet her burden to prove that she was entitled to post-conviction relief because: (1) no reason was presented why the mitigating evidence attached to her motion could not have been discovered previously, and (2) her sentence was within the statutory limits. Austin v. State, 971 So. 2d 1286, 2008 Miss. App. LEXIS 9 (Miss. Ct. App. 2008).

Following defendant's conviction for murder, defendant sought post-conviction relief based on newly discovered evidence, but the circuit court properly dismissed the matter because the matter was time-barred under Miss. Code Ann. § 99-39-5(2), and evidence did not fit within the statute's exceptions to overcome the three-year time limitation. Avara v. State, 987 So. 2d 1007, 2007 Miss. App. LEXIS 639 (Miss. Ct. App. 2007).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief as evidence that the inmate discovered that his appointed counsel was suspended from the practice of law a year after he was representing him did not warrant an exception to the time bar pursuant to Miss. Code Ann. § 99-39-5(2). Gatlin v. State, 932 So. 2d 67, 2006 Miss. App. LEXIS 479 (Miss. Ct. App. 2006).

Relief under Miss. Code Ann. § 99-39-5(2) and Miss. Code Ann. § 99-39-23(6) was properly denied because the exceptions to the procedural bars did not apply where a prisoner's failure to understand the law regarding jury instructions or effective assistance of counsel, until he later conducted research regarding his case, did not constitute newly discovered evidence and did not invoke the plain error rule. Pickle v. State, 942 So. 2d 243, 2006 Miss. App. LEXIS 398 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 721 (Miss. 2006).

Inmate's motions for post-conviction relief were denied as successive and time barred because the inmate failed to show that any exceptions applied; a letter from a district attorney recommending a denial of parole did not constitute newly discovered evidence because it did not exist at the time of trial. Garlotte v. State, 915 So. 2d 460, 2005 Miss. App. LEXIS 280 (Miss. Ct. App.), cert. denied, 921 So. 2d 1279, 2005 Miss. LEXIS 769 (Miss. 2005).

Court properly dismissed petitioner's motion to vacate and set aside his conviction and sentence as time barred pursuant to Miss. Code Ann. § 99-39-5(2) because petitioner's guilty plea to two counts of armed robbery negated any notion that there was some undiscovered evidence that could prove his innocence. Chancy v. State, 938 So. 2d 267, 2005 Miss. App. LEXIS 920 (Miss. Ct. App. 2005), aff'd, 938 So. 2d 251, 2006 Miss. LEXIS 486 (Miss. 2006).

Where defendant's post-conviction motion was successive under Miss. Code Ann. § 99-39-23(6) and was not preserved by a proper objection, the alleged mistake was clearly discoverable at sentencing as required by Miss. Code Ann. § 99-39-5(2), and the appeal was not properly supported because no part of Fed. R. Crim. P. 11 states what defendant claimed on appeal; the motion was properly dismissed. McGriggs v. State, 877 So. 2d 447, 2003 Miss. App. LEXIS 993 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 855 (Miss. 2004).

Defendant's claim in a motion for post-conviction relief that he was entitled to a new trial of two counts of robbery to which defendant had pleaded guilty based on newly discovered evidence could not be considered as the claim was being raised for the first time on appeal; defendant could, however raise the issue in a separate proceeding. Donnelly v. State, 841 So. 2d 207, 2003 Miss. App. LEXIS 255 (Miss. Ct. App. 2003).

Any new evidence presented by a defendant in a post-conviction relief petition would almost certainly require a different result in the conviction or sentence. Ouzts v. State, 817 So. 2d 585, 2001 Miss. App. LEXIS 408 (Miss. Ct. App. 2001).

A defendant who pled guilty to felony escape was not entitled to relief on the basis of newly discovered evidence which allegedly showed that he was in jail on the date of his alleged escape; such evidence was actually consistent with guilt because, in order to escape from jail on a specific date, an individual would necessarily have to be in the jail on that same date. Henley v. State, 749 So. 2d 246, 1999 Miss. App. LEXIS 547 (Miss. Ct. App. 1999).

8. Claim that person other than defendant committed crime.

A defendant was not entitled to an evidentiary hearing on his motion for post-conviction relief where the petition was time barred under subsection (2) of this section, and the defendant's allegations were insufficient to require the trial court to grant an evidentiary hearing where his claims were based primarily on the allegation that a witness was available to testify that the crime with which the defendant was charged had been committed by another person and that the witness was not available to make an affidavit because the defendant was incarcerated. Campbell v. State, 611 So. 2d 209, 1992 Miss. LEXIS 793 (Miss. 1992).

9. Unlawfully held in custody.

In a case where an applicant was challenging a habitual offender finding, post-conviction relief was not available based on Miss. Code Ann. § 99-39-5(1) because the applicant was no longer in custody. An original five-year sentence for the crime of false pretenses had expired before the motion for post-conviction relief was filed; even though the applicant was serving a sentence for assault of a law enforcement officer that was enhanced due to the false pretenses conviction, he was no longer in custody for the false pretenses conviction. Dobbs v. State, 18 So. 3d 295, 2009 Miss. App. LEXIS 215 (Miss. Ct. App. 2009).

Where appellant pleaded guilty to burglary of a dwelling and served his eight-year sentence in the Mississippi Department of Corrections, his second petition for post-conviction relief was barred by Miss. Code Ann. § 99-39-5(1). Appellant was no longer a prisoner in Mississippi and was living in Tennessee. Dallas v. State, 994 So. 2d 862, 2008 Miss. App. LEXIS 455 (Miss. Ct. App. 2008).

Trial court properly dismissed inmate's petition for post-conviction relief. The inmate's burglary sentence expired in 1995; therefore, he was not in custody under a sentence imposed by a court of record of the State of Mississippi which is a prerequisite to maintaining a motion for post-conviction relief. Rice v. State, 910 So. 2d 1163, 2005 Miss. App. LEXIS 242 (Miss. Ct. App.), cert. denied, 920 So. 2d 1008, 2005 Miss. LEXIS 547 (Miss. 2005).

Where defendant was sentenced concurrently in Mississippi for two felony sentences concurrent with his Texas conviction, his being paroled in Texas did not entitle him to release from confinement under his Mississippi convictions. Smith v. State, 853 So. 2d 1277, 2003 Miss. App. LEXIS 761 (Miss. Ct. App. 2003).

The appellant could legitimately be said to be "in custody" for purposes of subsection (1)(g), even though he was not currently being held in Mississippi due to his incarceration elsewhere, since, but for this incarceration, he would have been subject to imprisonment in Mississippi because the state had a "hold" on him and he was going be released to Mississippi immediately following his out-of-state incarceration. Unruh v. Puckett, 716 So. 2d 636, 1998 Miss. LEXIS 311 (Miss. 1998).

10. Videotapes.

In a wrongful death case, a court did not abuse its discretion by admitting photographs of the decedent and two "day in the life" videos where the photographs were relevant to show plaintiff's loss, and the videos were relevant to proving plaintiff's case. The footage showed the type of person the decedent was prior to his injuries, the type of care decedent required subsequentially, and his drastically diminished capacity to interact with his wife, child and family, among other things. Eckman v. Moore, 2003 Miss. LEXIS 552 (Miss. Oct. 23, 2003), sub. op., 876 So. 2d 975, 2004 Miss. LEXIS 287 (Miss. 2004).

11. Timeliness.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 4 (Miss. Ct. App. Jan. 7, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 350 (Miss. 2020).

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 4 (Miss. Ct. App. Jan. 7, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 350 (Miss. 2020).

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

Inmate did not file his post-conviction collateral relief motion within three years and thus, motion was procedurally barred unless an exception applied, and the inmate failed to show that an exception applied. Miles v. State, — So. 3d —, 2020 Miss. App. LEXIS 137 (Miss. Ct. App. Apr. 28, 2020).

Several statutory bars applied because the mandate in petitioner's direct appeal issued in October 1996, and the successive petition for post-conviction relief was filed in September 2018; that filing was subject to the one-year time bar. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Defendant was not entitled to leave to proceed in the trial court because his application was subject to the statutory time bar, his previous petition for post-conviction relief was denied, the filing was successive, he presented no arguable basis for his claims, and the petition was frivolous. Cooper v. State, — So. 3d —, 2020 Miss. LEXIS 97 (Miss. Apr. 28, 2020).

Inmate's post-conviction relief claim was time barred under the Mississippi Uniform Post-Conviction Collateral Relief Act's three year statute of limitations. Galloway v. State, 298 So. 3d 966, 2020 Miss. LEXIS 104 (Miss. 2020).

Appellant's postconviction relief (PCR) motion was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 99-39-5(2). Appellant, who did not file his PCR motion until approximately six years after his conviction, failed to show any extraordinary circumstances to escape the statute of limitations. Kelly v. State, — So. 3d —, 2020 Miss. App. LEXIS 170 (Miss. Ct. App. May 12, 2020).

Petition for postconviction relief was subject to Miss. Code Ann. § 99-39-5's time bar where his direct appeal became final in 2013. Blunt v. State, — So. 3d —, 2019 Miss. LEXIS 164 (Miss. Apr. 17, 2019).

Appellant's motion for post-conviction relief (PCR) was properly procedurally barred because appellant filed his second PCR motion more than eight years after pleading guilty and approximately three months after the trial court denied and dismissed all of his claims asserted in his original PCR motion. Green v. State, — So. 3d —, 2019 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 19, 2019), cert. denied, 276 So. 3d 660, 2019 Miss. LEXIS 298 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 876, 205 L. Ed. 2d 494, 2020 U.S. LEXIS 324 (U.S. 2020).

Petitioner's application for leave to proceed in the trial court was time barred because it was filed over thirteen years after the mandate issued in his appeal. Forkner v. State, 277 So. 3d 946, 2019 Miss. LEXIS 19 (Miss. 2019).

Exception to the statute of limitations did not apply because appellant failed to show that there existed biological evidence that could be subjected to additional DNA testing that would provide a reasonable likelihood of more probative results; the letter that appellant attached to his post-conviction relief motion indicated that the original tests utilized in the case were still considered reliable. Green v. State, 294 So. 3d 634, 2019 Miss. App. LEXIS 478 (Miss. Ct. App. 2019), cert. denied, 291 So. 3d 1111, 2020 Miss. LEXIS 155 (Miss. 2020).

When defendant did not allege defendant did not timely perfect an appeal through no fault of defendant's, an appellate court was not deprived of jurisdiction because the State did not appeal a civil post-conviction order granting defendant an out-of-time appeal or argue the order was void. Griffin v. State, 269 So. 3d 337, 2018 Miss. App. LEXIS 187 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 796, 2019 Miss. LEXIS 6 (Miss. 2019).

Trial court properly dismissed defendant's petition for post-conviction collateral relief because it was untimely where he did not challenge his sentence for more than five years, he claimed no exception to the procedural time-bar, and his assertion that his sentencing order was ambiguous did not fall within the statutory exceptions. Shields v. State, 223 So. 3d 809, 2017 Miss. App. LEXIS 384 (Miss. Ct. App. 2017).

Defendant's motion for post-conviction relief was time-barred because defendant, after defendant pleaded guilty, filed defendant's motion well after the three-year statute of limitations. Moore v. State, 250 So. 3d 521, 2018 Miss. App. LEXIS 317 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 99 (Miss. 2019).

Appellant's motion for post-conviction relief (PCR) was time-barred because he pleaded guilty in 2009 and filed his first motion in 2016, well after the three-year statute of limitations; appellant's case was not exempted from the time-bar because he failed to establish, either through his PCR motion or affidavit, that his defense counsel failed to communicate a plea offer to him. Payton v. State, 276 So. 3d 1201, 2018 Miss. App. LEXIS 376 (Miss. Ct. App. 2018).

Appellant's motion for post-conviction relief (PCR) was time-barred, and his case was not exempted from the time-bar because he failed to establish, either through his PCR motion or affidavit, that his defense counsel failed to communicate a plea offer to him; appellant did not include a witness's affidavit with his PCR motion, and he failed to show good cause why her affidavit could not be obtained.

Payton v. State, 276 So. 3d 1201, 2018 Miss. App. LEXIS 376 (Miss. Ct. App. 2018).

Defendant's motion for postconviction relief was properly denied as his motion was time-barred and without merit because his motion was not filed within three years after entry of the judgment of conviction; and, notwithstanding the time-bar, defendant did not show that he entered his guilty plea involuntarily as the plea-hearing transcript affirmatively demonstrated that the trial court ensured defendant had knowledge of the elements of sexual battery; defendant informed the court that he understood the charge against him; the trial court had the indictment read aloud, which included each element of defendant's charge; and the State showed how it would prove its case had it gone to trial. Shoemake v. State, 222 So. 3d 339, 2017 Miss. App. LEXIS 328 (Miss. Ct. App. 2017).

Supreme court decision was neither an intervening decision for purposes of the time-bar exception in the Mississippi Uniform Post-Conviction Collateral Relief Act nor a basis for reversal of petitioner's conviction and sentence on the merits of the direct appeal because petitioner's case was final before the supreme court case was decided; petitioner's direct appeal was dismissed, and the mandate was issued prior to April 7, 2011. Maxwell v. State, 216 So. 3d 416, 2017 Miss. App. LEXIS 198 (Miss. Ct. App. 2017).

Petitioner's appeal was an out-of-time appeal as authorized under the Mississippi Uniform Post-Conviction Collateral Relief Act because his direct appeal was dismissed in 2010, and petitioner filed his application for post-conviction collateral relief (PCCR) in 2015; the PCCR application was not timely filed and was subject to the time-bar. Maxwell v. State, 216 So. 3d 416, 2017 Miss. App. LEXIS 198 (Miss. Ct. App. 2017).

Only claim asserted by defendant in defendant's motion for post-conviction collateral relief that was exempted from the bar of the three-year statute of limitations was defendant's claim of an illegal sentence because alleged errors effecting fundamental rights were not time-barred. Defendant's claims that defendant's guilty plea was not knowingly and intelligently made, that defendant's indictment was improperly amended, and that the assistance by defendant's counsel was ineffective were time-barred. Parker v. State, 208 So. 3d 19, 2017 Miss. App. LEXIS 12 (Miss. Ct. App. 2017).

All of petitioner's claims except his claim of ineffective post-conviction relief counsel were barred as untimely, as successive, by res judicata, or a combination of all three. Petitioner's trial attorneys completed their representation of petitioner in early 1999 and any claim against them could and should have been already been brought. Jordan v. State, 213 So. 3d 40, 2016 Miss. LEXIS 507 (Miss. 2016).

Appellant's motion for postconviction relief was untimely and thus, barred by the three-year statute of limitations of the Mississippi Uniform Postconviction Collateral Relief Act, because it was filed nearly nine years after appellant entered his guilty plea. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Defendant's motion for post-conviction relief was time-barred because the motion was filed outside the three years following the entry of defendant's convictions after defendant's guilty pleas, and the motion was not subject to any of the statutory exceptions to the time-bar. McDonald v. State, 204 So. 3d 780, 2016 Miss. App. LEXIS 583 (Miss. Ct. App.), cert. denied, 205 So. 3d 1085, 2016 Miss. LEXIS 498 (Miss. 2016).

Defendant's motion for postconviction relief was time-barred because defendant did not file the motion within three years after entry of the judgment of conviction, and none of the statutory exceptions which were enumerated was applicable. Miller v. State, 192 So. 3d 383, 2016 Miss. App. LEXIS 315 (Miss. Ct. App. 2016).

On its face, the inmate's post-conviction relief motion, filed almost six years after the entry of his conviction, was time-barred. Brown v. State, 187 So. 3d 667, 2016 Miss. App. LEXIS 132 (Miss. Ct. App. 2016).

Petitioner's 2014 postconviction relief motion was time-barred under Miss. Code Ann. § 99-39-5(2) where it was filed more than six years after his December 10, 2007 guilty plea. Wallace v. State, 180 So. 3d 767, 2015 Miss. App. LEXIS 607 (Miss. Ct. App. 2015).

Defendant's claims for postconviction relief were time-barred because, following defendant's guilty plea, they were not filed within three years after entry of the judgment of conviction. Furthermore, defendant's claims were not entitled to an exception to the time-bar because defendant's claims that the indictment and information were defective, that defendant was subjected to double jeopardy, and that defendant received ineffective assistance of counsel were without merit. Pinkney v. State, 192 So. 3d 337, 2015 Miss. App. LEXIS 614 (Miss. Ct. App. 2015).

Defendant's post-conviction-relief motion was time-barred because the motion was filed more than five years after the date of defendant's guilty plea to a controlled substance charge, and defendant did not assert any statutory exception to the time bar. Avery v. State, 179 So. 3d 1182, 2015 Miss. App. LEXIS 320 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 594 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 1210, 194 L. Ed. 2d 213, 2016 U.S. LEXIS 1602 (U.S. 2016).

Defendant's post-conviction relief claims were procedurally barred because they were untimely filed as they were filed more than six years after defendant pleaded guilty to forcible rape. Ruffin v. State, 176 So. 3d 153, 2015 Miss. App. LEXIS 512 (Miss. Ct. App.), sub. op., 188 So. 3d 1240, 2015 Miss. App. LEXIS 688 (Miss. Ct. App. 2015).

Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; although claims of mental competency were not subject to the procedural bars or res judicata, appellant gave neither the circuit court nor his attorney any reason to question his competency at his guilty-plea hearing. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

In a case in which appellant challenged the circuit court's dismissal of his petition for post-conviction relief as time-barred under Miss. Code Ann. § 99-39-5, appellant's case was not excepted from the three-year statute of limitations. Appellants claim that Gowdy v. State negated the three-year time-bar was unfounded. Parham v. State, 174 So. 3d 880, 2015 Miss. App. LEXIS 83 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 485 (Miss. 2015).

Although an inmate's pro se status allowed for technical drafting errors, the inmate's motion for a writ of habeas corpus ad subjiciendum was actually an untimely and successive post-conviction collateral relief (PCCR) motion that was procedurally barred due to the inmate's failure to file the motion within the three-year statutory period and to the inmate's filing of four previous PCCR motions, the denial of one of which was affirmed as untimely and successive. Creel v. King, 161 So. 3d 1098, 2014 Miss. App. LEXIS 681 (Miss. Ct. App. 2014).

Petitioner's application for post-conviction relief was time-barred because it was filed more than ten years after the entry of the judgment of conviction; however, the court of appeals addressed the merits of his claim that he was subjected to double jeopardy because the right to be free from double jeopardy is a fundamental right. Owens v. State, 150 So. 3d 114, 2014 Miss. App. LEXIS 608 (Miss. Ct. App. 2014).

Ineffective assistance of counsel claim in petitioner's post-conviction relief motion was untimely under Miss. Code Ann. § 99-39-5(2) as petitioner knew of potential alibi witnesses well within the three-year limitations period, but did not file within three years of the denial of his petition for certiorari. Sturkey v. State, 174 So. 3d 870, 2014 Miss. App. LEXIS 675 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 475 (Miss. 2015).

Petitioner waited almost 10 years to challenge his indictment, and thus his post-conviction motion was time-barred. Randall v. State, 148 So. 3d 686, 2014 Miss. App. LEXIS 575 (Miss. Ct. App. 2014).

Defendant was time-barred from filing a postconviction relief motion because the motion was not filed within three years after the entry of the judgment of conviction. No exemption was applicable because self-authenticated records of defendant's prior convictions were not created for the purpose of trial, but were preexisting documents, and were not testimonial evidence that triggered defendant's constitutional right to confront witnesses. Scurlock v. State, 147 So. 3d 894, 2014 Miss. App. LEXIS 519 (Miss. Ct. App. 2014).

Statutory three year procedural bar applied because defendant's motion for post-conviction relief was not timely filed. Small v. State, 141 So. 3d 61, 2014 Miss. App. LEXIS 357 (Miss. Ct. App. 2014).

Reason that defendant asserted entitlement to an out-of-time appeal of defendant's burglary conviction – that defendant told defendant's new attorney that defendant wanted to revoke defendant's waiver and pursue an appeal two days after a hearing on defendant's guilty plea to aggravated assault – was not proof that defendant asked defendant's attorney to appeal within the time allowed for giving notice of an appeal. Therefore, because defendant no longer had the right to appeal at the time defendant revoked defendant's waiver of appeal, defendant's revocation did not entitle defendant to an out-of-time appeal. Conwill v. State, 168 So. 3d 1080, 2013 Miss. App. LEXIS 778 (Miss. Ct. App. 2013), cert. denied, 140 So. 3d 940, 2014 Miss. LEXIS 299 (Miss. 2014).

Newly discovered evidence exception to the procedural/time bar for an inmate's postconviction relief motion existed because an aggravated assault victim's recantation of his prior trial testimony was not newly discovered evidence and did not support a new trial for the inmate. Van Norman v. State, 114 So. 3d 799, 2013 Miss. App. LEXIS 312 (Miss. Ct. App. 2013).

Since appellant pleaded guilty, the motion for reconsideration of the judgment dismissing his motion for post-conviction relief and the affidavit were submitted after the three-year statute of limitations for filing a motion for post-conviction relief had passed, Miss. Code Ann. § 99-39-5; despite the fact that appellant's arguments were first raised outside the three-year statute of limitations, his self-serving affidavit did not meet the requirements of the post-conviction-relief statute, Miss. Code Ann. § 99-39-9(1)(e), because appellant failed to provide supporting affidavits other than his own to prove his plea bargain was for a sentence of life with parole. Collier v. State, 112 So. 3d 1088, 2013 Miss. App. LEXIS 221 (Miss. Ct. App. 2013).

Circuit court properly dismissed appellant's motion for post-conviction collateral relief (PCR) because it was time-barred under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-5(2); the motion was filed over seven years after he was convicted, and appellant failed to show that an exception to the successive-writ bar or the time-bar applied. Nichols v. State, 120 So. 3d 433, 2013 Miss. App. LEXIS 224 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 63 (Miss. 2014).

Circuit court correctly found that appellant's post-conviction relief (PCR) motion was time-barred under Miss. Code Ann. § 99-39-5(2)(b) because appellant filed his PCR motion twenty-seven years after the limitations period had expired. Whetstone v. State, 109 So. 3d 616, 2013 Miss. App. LEXIS 120 (Miss. Ct. App. 2013).

Appellant was procedurally barred from challenging his manslaughter conviction because he failed to file his post-conviction relief motion within three years of entering his guilty plea pursuant to Miss. Code Ann. § 99-39-5(2); because Miss. Code Ann. § 99-39-9(2) required separate motions for separate convictions, each of appellant's convictions was subject to its own time-bar under § 99-39-5(2), and many of the issues raised in the appeal were barred since they related solely to the manslaughter conviction. Brandon v. State, 108 So. 3d 999, 2013 Miss. App. LEXIS 67 (Miss. Ct. App. 2013).

Dismissal of an inmate's fifth post-conviction relief motion against the State was proper because the motion was filed over 25 years beyond the applicable 3-year limitations period, and thus was both time-barred under Miss. Code Ann. § 99-39-5(2), and successive-writ barred under Miss. Code Ann. § 99-39-23(6); the inmate failed to show any exceptions. Contrary to inmate's claim, his life sentence had not "expired," and, further, his mere attack on his attorney, without more, was insufficient to circumvent the procedural time-bar or successive-writ bar. Smith v. State, 118 So. 3d 180, 2013 Miss. App. LEXIS 101 (Miss. Ct. App. 2013).

Inmate's motion for postconviction relief, filed 10 years after he pled guilty to murder, was untimely. McGriggs v. State, 117 So. 3d 626, 2012 Miss. App. LEXIS 798 (Miss. Ct. App. 2012), cert. dismissed, 117 So. 3d 330, 2013 Miss. LEXIS 444 (Miss. 2013).

12. Successive writs.

Petitioner's application for leave to proceed in the trial court was denied because it was barred by time and as a successive application; notwithstanding the procedural bars, the claims raised in the application for leave were without merit because the filing was frivolous. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 12 (Miss. Jan. 29, 2020).

Because petitioner filed a successive post-conviction relief motion twenty years after his guilty pleas were entered, his claims were both time-barred and barred as a successive writ; petitioner did not demonstrate that his claims constituted an exception to these procedural bars. Bardney v. State, 236 So. 3d 825, 2017 Miss. App. LEXIS 545 (Miss. Ct. App. 2017).

Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; appellant's claims of ineffective assistance and the voluntariness of his guilty pleas were subject to the procedural bars. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

13. Standing.

Circuit court erred in dismissing an inmate's case for lack of jurisdiction because the inmate had standing; under the unambiguous plain language of § 99-39-5 (1)(d), the inmate had standing to proceed with his illegal sentence claim because he was a person sentenced by a court of record of the State of Mississippi who claimed that the sentence exceeded the maximum authorized by law. Howell v. State, 283 So. 3d 1100, 2019 Miss. LEXIS 398 (Miss. 2019).

Standing no longer hinges on the requirement of being any prisoner in custody under sentence of a court of record of the State of Mississippi; instead, postconviction relief is available to any person sentenced by a court of record of the State of Mississippi, and the 2009 amendment expands the category of individuals who have standing under the Mississippi Uniform Post-Conviction Collateral Relief Act. Howell v. State, 283 So. 3d 1100, 2019 Miss. LEXIS 398 (Miss. 2019).

Circuit court properly denied and dismissed defendant's motion for post-conviction relief because he had no standing before the trial court inasmuch as he was never incarcerated and his motion was filed after he had fully served his probation and more than five years after his registration as a sex offender. Purvis v. State, 240 So. 3d 468, 2017 Miss. App. LEXIS 664 (Miss. Ct. App. 2017).

14. Resentencing.

Juvenile's sentence of life without parole after a Miller resentencing was not an abuse of discretion because the court considered characteristics and circumstances unique to juveniles, as Miller required, and, having satisfied the court's Miller obligation, did not abuse the court's discretion in denying relief from a previously imposed sentence of life without parole. Wharton v. State, 298 So. 3d 921, 2019 Miss. LEXIS 407 (Miss. 2019).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

The motion under this article shall be filed as an original civil action in the trial court, except in cases in which the petitioner's conviction and sentence have been appealed to the Supreme Court of Mississippi and there affirmed or the appeal dismissed. Where the conviction and sentence have been affirmed on appeal or the appeal has been dismissed, the motion under this article shall not be filed in the trial court until the motion shall have first been presented to a quorum of the Justices of the Supreme Court of Mississippi, convened for said purpose either in termtime or in vacation, and an order granted allowing the filing of such motion in the trial court. The procedure governing applications to the Supreme Court for leave to file a motion under this article shall be as provided in Section 99-39-27.

HISTORY: Laws, 1984, ch. 378, § 4; Laws, 2009, ch. 339, § 3, eff from and after passage (approved Mar. 16, 2009).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Cross References — Need to name state as respondent in motion for application to proceed, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Proper courts.
3. Habeas corpus.
4. Ineffective assistance of counsel.
5. Exclusion of blacks from jury.
6. Jurisdiction.

1. In general.

Court of Appeals of Mississippi could not reserve post-conviction claims for defendant, and could only deny relief without prejudice to a future post-conviction claim, because, as defendant had appealed defendant's conviction, defendant had to petition the Supreme Court of Mississippi for leave to file a post-conviction-relief motion. This could only be done after post-conviction issues outside the record, if they existed, were found, and a proposed motion was executed and submitted to the Supreme Court. Walker v. State, 262 So. 3d 560, 2018 Miss. App. LEXIS 302 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 42 (Miss. 2019).

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment, petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

In his post-conviction relief petition, petitioner failed to identify an alternative method of execution that was feasible, readily implemented, and significantly reduced a substantial risk of severe pain; thus, from the face of the petition, he had no Eighth Amendment method-of-execution claim, and his request for leave to proceed in the trial court with a motion for post-conviction relief was denied. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Because petitioner failed to show a different outcome would have been reached had a witness testified according to her affidavit, his request for leave to proceed with in the trial court with a motion for post-conviction relief on his recanted-testimony claim was denied; the witness was not the only one who identified petitioner. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Petitioner was granted leave to proceed in the trial court with his post-conviction relief petition on his claim that his Sixth Amendment right to trial by an impartial jury was violated since one of the jurors was biased; since petitioner's claim was at least "procedurally alive," his allegation of improper juror contact warranted an evidentiary hearing Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Mississippi Supreme Court had affirmed petitioner's conviction and sentence in 1975, and thus before he could file a postconviction relief motion in the circuit court, he had to obtain permission from the Supreme Court to do so. Edmond v. State, 141 So. 3d 58, 2014 Miss. App. LEXIS 356 (Miss. Ct. App. 2014).

Defendant's appeal of the denial of post-conviction relief was dismissed where there was no suggestion that defendant sought leave from the Mississippi supreme court, much less received the supreme court's permission to seek postconviction relief at the trial court level; without such permission, the trial court lacked jurisdiction to consider the post-conviction motion. Craft v. State, 966 So. 2d 856, 2007 Miss. App. LEXIS 662 (Miss. Ct. App. 2007).

Because the appellate court affirmed the inmate's conviction on direct appeal, Miss. Code Ann. § 99-39-7 mandated that the inmate obtain permission from the supreme court to seek post-conviction relief from the trial court; because the inmate failed to obtain the requisite permission from the supreme court, the chancery court lacked jurisdiction to entertain the inmate's collateral attacks and the appellate court lacked jurisdiction to entertain the inmate's appeal. Bessent v. Clark, 974 So. 2d 928, 2007 Miss. App. LEXIS 633 (Miss. Ct. App. 2007).

Post-conviction relief motion must be filed as an original civil action. Cook v. State, 921 So. 2d 1282, 2006 Miss. App. LEXIS 124 (Miss. Ct. App. 2006).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief as the supreme court had never granted the inmate leave to file his motion for relief. Chatman v. State, 936 So. 2d 375, 2006 Miss. App. LEXIS 56 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 403 (Miss. 2006).

Although the inmate did not explicitly file a motion for post-conviction relief when he filed his motion to clarify his sentence, the motion addressed what the inmate believed was an illegal sentence, thus, the appellate court treated the motion as a denial of post-conviction relief. Fuller v. State, 914 So. 2d 1230, 2005 Miss. App. LEXIS 858 (Miss. Ct. App. 2005).

Issues raised in defendant's second motion for post-conviction collateral relief (PCR) under consideration were essentially the same as were considered by the courts in the his first PCR and appeal. Thus, his claims were procedurally barred based on the successive writ bar and res judicata; in addition, his second PCR motion was filed more than 10 years after his initial guilty plea and was procedurally barred, and because he filed his second PCR motion in the circuit court without first filing a motion with the supreme court for leave to file in the circuit court the trial court was without jurisdiction to consider said motion. Sykes v. State, 919 So. 2d 1064, 2005 Miss. App. LEXIS 458 (Miss. Ct. App. 2005).

Where an inmate never obtained permission from the highest state appellate court to file a post-conviction relief motion with respect to his 1993 convictions, the intermediate appellate court had no jurisdiction to address his allegations regarding those convictions in an appeal from a trial court's denial of his motion for post-conviction relief. Torns v. State, 866 So. 2d 486, 2003 Miss. App. LEXIS 1115 (Miss. Ct. App. 2003).

Where defendant's conviction and sentence had been affirmed on direct appeal, it was necessary for him to secure permission from the Mississippi Supreme Court in order to pursue a motion for post-conviction relief, assuming that it was proper to treat the letter request as a motion for post-conviction relief; nothing showed that permission was either sought or granted. Cox v. State, 856 So. 2d 679, 2003 Miss. App. LEXIS 657 (Miss. Ct. App. 2003).

The statutory mandate that a defendant who has had his case affirmed on appeal must obtain permission from the supreme court to seek post-conviction relief from the trial court is not merely advisory, but jurisdictional. Doss v. State, 757 So. 2d 1016, 2000 Miss. App. LEXIS 68 (Miss. Ct. App. 2000).

The rule that the death of a defendant who has perfected his or her right to appeal does not render the appeal moot applies to petitions for rehearing or when a defendant dies pending appeal from a denial of post-conviction relief; however, if a defendant dies pending application to the Supreme Court for leave to proceed in trial court on post-conviction relief grounds, the application will be deemed moot and the conviction will remain intact. Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

A defendant did not cause a "conviction and sentence" to be appealed to the Supreme Court, as required by this section, where his original, underlying conviction and sentence resulted from a guilty plea, and therefore there could be no appeal to the Supreme Court. Martin v. State, 556 So. 2d 357, 1990 Miss. LEXIS 28 (Miss. 1990).

Under this section and § 99-39-25, there are only 2 instances in which the Supreme Court can entertain a post-conviction motion. One is where the matter is presented originally to the trial court and thereafter appealed to the Supreme Court pursuant to § 99-39-25. The other is where the prisoner is required to first seek leave of the Supreme Court to proceed in the lower court. Martin v. State, 556 So. 2d 357, 1990 Miss. LEXIS 28 (Miss. 1990).

Question of whether admission at trial of tape recorded statements taken from defendant outside presence of counsel violated Sixth Amendment rights was res judicata and barred from relitigation because defendant's conviction of murder became final when Fifth Circuit upheld his conviction and he did not petition United States Supreme Court to review that decision. Jordan v. State, 518 So. 2d 1186, 1987 Miss. LEXIS 2799 (Miss. 1987), cert. denied, 488 U.S. 818, 109 S. Ct. 57, 102 L. Ed. 2d 35, 1988 U.S. LEXIS 3832 (U.S. 1988).

2. Proper courts.

Inmate's postconviction motion should have been treated as a motion for postconviction relief and, as such, it was properly filed in the circuit court under Miss. Code Ann. § 99-39-7. Therefore, the circuit court erred in dismissing the motion on the ground that it was filed in the wrong county. Council v. Miss. Dep't of Corr., 51 So. 3d 256, 2011 Miss. App. LEXIS 5 (Miss. Ct. App. 2011).

Where a defendant's conviction was affirmed on direct appeal, defendant's petition was post-conviction relief filed 13 years later was procedurally barred because defendant failed to first obtain leave from the Mississippi Supreme Court before filing the petition. Wardley v. State, 37 So. 3d 1222, 2010 Miss. App. LEXIS 136 (Miss. Ct. App.), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 499 (Miss. 2010).

Where appellant was incarcerated on a conviction and sentence imposed by the Clay County Circuit Court in Mississippi, the Circuit Court of Marshall County, Mississippi, lacked jurisdiction to treat his petition for an order to show cause as a motion for post-conviction relief under Miss. Code Ann. §§ 99-39-1 to 99-39-29. Due to the lack of jurisdiction, the Circuit Court of Marshall County should have treated appellant's filings as non-post-conviction relief filings. Dennis Dobbs v. State, 6 So. 3d 1085, 2009 Miss. LEXIS 165 (Miss. 2009).

Inmate's collateral attack was barred because the record contained no order from the supreme court that would have allowed the inmate to file, in the trial court, his motion to set aside his sentence, which was treated as a petition for post-conviction collateral relief. Jones v. State, 990 So. 2d 793, 2008 Miss. App. LEXIS 562 (Miss. Ct. App. 2008).

Where the Mississippi Supreme Court last exercised jurisdiction in the case when it affirmed the denial of the first petition for post-conviction relief, Miss. Code Ann. § 99-39-7 required appellant's successive petition for post-conviction relief first be presented to that court before filing the petition in the circuit court. The Mississippi Supreme Court had initial jurisdiction over the post-conviction proceeding. Dallas v. State, 994 So. 2d 862, 2008 Miss. App. LEXIS 455 (Miss. Ct. App. 2008).

Appeal of a prisoner's jail-time credit grievance, brought in the Lowndes County Circuit Court, was properly dismissed for improper venue because: (1) if the motion had been for post-conviction relief, jurisdiction would have been proper in Lowndes County because that was where the prisoner's conviction had been obtained; (2) however, the motion was not for post-conviction relief; (3) rather, the prisoner was appealing the decision of an administrative agency, and as a result, jurisdiction was proper in the county where the defendant resided, which in the case at hand was Marion County, the prisoner's county of incarceration. Stokes v. State, 984 So. 2d 1089, 2008 Miss. App. LEXIS 374 (Miss. Ct. App. 2008).

Prisoner's post-conviction constitutional challenge to his habitual offender sentence was properly denied because the prisoner failed to obtain the Mississippi Supreme Court's permission before filing his petition, and he did not file in the circuit court in which he was convicted. McLamb v. State, 974 So. 2d 935, 2008 Miss. App. LEXIS 64 (Miss. Ct. App. 2008).

Appellate court lacked jurisdiction to hear defendant's appeal of the denial of his motion to reconsider his sentence, which was treated as a motion seeking post-conviction relief, because the case was affirmed on direct appeal, and defendant failed to gain permission from the supreme court to move for post-conviction relief. Robinson v. State, 968 So. 2d 981, 2007 Miss. App. LEXIS 754 (Miss. Ct. App. 2007).

Even though a court where a conviction was obtained had exclusive jurisdiction over a motion for post-conviction relief, an appellate court considered three motions because the Mississippi Supreme Court had ruled that a trial court's dismissal encompassed all three motions. Garlotte v. State, 915 So. 2d 460, 2005 Miss. App. LEXIS 280 (Miss. Ct. App.), cert. denied, 921 So. 2d 1279, 2005 Miss. LEXIS 769 (Miss. 2005).

Since the dismissal of defendant's appeal was a final judgment, Miss. Code Ann. § 99-39-7 required that he file his motion for post-conviction relief in the Mississippi Supreme Court, seeking permission to file in the trial court. Since he did not follow proper court procedure, the trial court properly denied his motion. Lyons v. State, 881 So. 2d 373, 2004 Miss. App. LEXIS 882 (Miss. Ct. App. 2004).

Circuit court was correct in dismissing defendant's post-conviction relief petition since the circuit court of another county, where the conviction was obtained, had exclusive jurisdiction to consider such a claim. Stanley v. Turner, 846 So. 2d 279, 2002 Miss. App. LEXIS 836 (Miss. Ct. App. 2002), cert. denied, 846 So. 2d 229, 2003 Miss. App. LEXIS 536 (Miss. Ct. App. 2003).

A defendant's post-conviction relief action for a stay of execution of a lower court judgment revoking probation, which was filed in the Supreme Court of Mississippi, would be dismissed without prejudice as having been filed in the wrong court, even though the defendant's previous direct appeal to the Supreme Court seeking review of the probation revocation was dismissed "without prejudice for [the defendant] to institute a post-conviction relief action under § 99-39-5(1)(g)," and thus the Supreme Court was arguably the last court to exercise jurisdiction and should therefore be the court of first resort for the post-conviction petition. For the Supreme Court to acquire exclusive, original jurisdiction over a petition filed under the Post-Conviction Relief Act, the Supreme Court must have previously made some final determination going to the merits of the underlying conviction and sentence; it is not enough that the Supreme Court dismissed an appeal without prejudice for lack of jurisdiction, and that the Supreme Court granted a temporary stay of execution incident to attempted post-conviction proceedings. In order to obtain Supreme Court review, the defendant would be required to file an appropriate petition in the lower court, claiming under § 99-39-5(1)(g) that his probation has been unlawfully revoked, and if dissatisfied with the ruling of that court he could appeal that ruling to the Supreme Court pursuant to § 99-39-25. Martin v. State, 556 So. 2d 357, 1990 Miss. LEXIS 28 (Miss. 1990).

A petition for a writ of habeas corpus was improperly entertained by the trial court in which it was filed because the petition was governed by the provisions of the Post-Conviction Collateral Relief Act and was therefore subject to the requirement that the petitioner first file a motion in the Supreme Court for permission to proceed in a trial court. State v. Read, 544 So. 2d 810, 1989 Miss. LEXIS 251 (Miss. 1989).

The Supreme court, rather than a lower court, had jurisdiction over a post-conviction petition where that court had last exercised jurisdiction in the case. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

Trial court has exclusive jurisdiction to hear and determine petition for post-conviction relief filed by convicted defendant who is precluded from taking direct appeal by virtue of having entered guilty plea. McDonall v. State, 465 So. 2d 1077, 1985 Miss. LEXIS 1983 (Miss. 1985).

3. Habeas corpus.

In a post-conviction proceeding in which an inmate appealed the circuit court's denial of his motion as untimely under the three-year limitations period in Miss. Code Ann. § 99-39-5(a), since the Mississippi Supreme Court granted the inmate permission to file a motion for post-conviction collateral relief, as set forth in Miss. Code Ann. § 99-39-27, that was a finding of a prima facie case. The circuit court should have requested that the State respond to the motion; then, pursuant to Miss. Code Ann. § 99-39-19, it should have examined the record and determined whether an evidentiary hearing was required. Pittman v. State, 20 So. 3d 51, 2009 Miss. App. LEXIS 664 (Miss. Ct. App. 2009).

Pursuant to Miss. Code Ann. § 99-39-7, a prisoner was required to get permission from the Mississippi Supreme Court to seek post-conviction relief; because the prisoner's application to pursue post-conviction relief was denied, the court of appeals dismissed the prisoner's appeal of the denial of his habeas corpus petition for lack of jurisdiction. Jackson v. State, 915 So. 2d 484, 2005 Miss. App. LEXIS 860 (Miss. Ct. App. 2005).

Because a prisoner's manslaughter conviction had been appealed and affirmed, he was required to obtain leave of the Mississippi Supreme Court to file a post-conviction relief motion; where the Supreme Court had refused the prisoner such permission upon concluding that his claims were time-barred, the circuit court was plainly barred from considering the prisoner's attack on his manslaughter conviction. Ramsey v. State, 859 So. 2d 1079, 2003 Miss. App. LEXIS 1086 (Miss. Ct. App. 2003).

Where defendant's conviction and sentence were affirmed on appeal, defendant was required to get permission to seek postconviction relief from a quorum of supreme court justices, and failure to do so required dismissal of defendant's appeal of the denial of his petition for post-conviction relief. Meshell v. State, 832 So. 2d 1244, 2002 Miss. App. LEXIS 852 (Miss. Ct. App. 2002).

A petition for a writ of habeas corpus was improperly entertained by the trial court in which it was filed because the petition was governed by the provisions of the Post-Conviction Collateral Relief Act and was therefore subject to the requirement that the petitioner first file a motion in the Supreme Court for permission to proceed in a trial court. State v. Read, 544 So. 2d 810, 1989 Miss. LEXIS 251 (Miss. 1989).

The trial court had exclusive jurisdiction to hear and determine defendant's petition for a writ of habeas corpus following his conviction for business burglary, where defendant's conviction and sentence had not been appealed to the Mississippi Supreme Court for affirmance or dismissal. McDonall v. State, 465 So. 2d 1077, 1985 Miss. LEXIS 1983 (Miss. 1985).

4. Ineffective assistance of counsel.

Record was inadequate to allow the appellate court to make a finding on defendant's constitutional claim of ineffective assistance of counsel, and the appellate court's review of the record did not affirmatively show that defendant's representation was ineffective. However, the appellate court concluded defendant should be given the opportunity to make a record on the issue in a properly filed application for leave to file a motion for post-conviction relief. Hinton v. State, — So. 3d —, 2020 Miss. App. LEXIS 526 (Miss. Ct. App. Sept. 15, 2020).

Denial by the intermediate appellate court of defendant's ineffective-assistance-of-counsel claim, without prejudice to defendant's right to seek relief as to the claimed error in a properly filed petition for post-conviction relief, was appropriate because the assignment of error on the point was beyond the contents of the record. Resolution of the issue was better left to be assessed on a complete record. Smith v. State, 275 So. 3d 100, 2019 Miss. App. LEXIS 238 (Miss. Ct. App. 2019).

Petitioner was denied leave to proceed in the trial court with a motion for post-conviction relief because he failed to show that counsel's actions were deficient and that the deficiency prejudiced the defense of the case for any of his ineffective-assistance-of-counsel claims. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

In a case in which an inmate appealed a circuit court's dismissal of his post-conviction relief (PCR) motion and he argued on appeal that his right to file a meaningful PCR motion should be reinstated and the PCR motion was untimely, the merits of his claim would not be addressed by the appellate court because the inmate also had an out-of-time direct appeal pending before the appellate court raising a number of the same issues, including his ineffective assistance of counsel claim. Additionally, under Miss. Code Ann. § 99-39-7, the Mississippi Supreme Court had to decide whether to allow the inmate proceed with the motion in the circuit court. McLaurin v. State, 31 So. 3d 64, 2010 Miss. App. LEXIS 43 (Miss. Ct. App. 2010).

In order to prevail on a claim that counsel's assistance was so defective as to require reversal of conviction or death sentence, defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

5. Exclusion of blacks from jury.

A petitioner seeking to vacate or set aside his judgment of conviction and sentence of death could not successfully raise for the first time the issue of exclusion of blacks from the jury where more than 4 years had elapsed since the date the guilty plead had been entered, the sentencing jury impaneled, and the death sentence imposed, and, in the interim, at least 3 different sets of counsel had worked on the case. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

6. Jurisdiction.

Because petitioner's motion for post-conviction relief (PCR) was filed while his direct appeal was pending, his request for PCR relief was premature, plus he failed to seek leave from the supreme court before filing his PCR motion in the circuit court; therefore, the circuit court's dismissal of the PCR motion was affirmed, as the circuit court lacked jurisdiction to reach the merits of his claim. Williams v. State, 296 So. 3d 137, 2020 Miss. App. LEXIS 18 (Miss. Ct. App. 2020).

Fact that the state supreme court granted appellee leave to proceed did not give appellee an unfettered right to present claims not alleged in the post-conviction motion, and the court's grant of leave to amend her motion to assert a new claim was circumscribed by statutory jurisdictional requirements. As appellee did not first obtain leave to challenge the State's failure to instruct the jury, the circuit court lacked authority to adjudicate the amended motion and allow appellee to amend her PCR motion to assert a new claim. State v. Childs, — So. 3d —, 2020 Miss. App. LEXIS 169 (Miss. Ct. App. May 12, 2020).

Circuit court lacked authority to adjudicate defendant's motion for post-conviction collateral relief (PCR) because defendant failed to obtain permission from the Supreme Court of Mississippi to file a motion for PCR in the circuit court, as required. Allen v. State, 288 So. 3d 358, 2019 Miss. App. LEXIS 268 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 200 (Miss. 2020).

Circuit court erred in dismissing appellant's petition for post-conviction collateral relief (PCCR) due to his failure to obtain leave from the Mississippi Supreme Court to proceed in the circuit court because the petition was properly filed in the circuit court, which had jurisdiction to entertain the petition; since appellant's sentence had not been appealed, appellant was not required to seek leave to proceed in the circuit court. Watts v. State, 244 So. 3d 90, 2018 Miss. App. LEXIS 169 (Miss. Ct. App. 2018).

Chancery court did not err when it dismissed petitioner's motion for post-conviction relief (PCR) for lack of subject-matter jurisdiction because it could not have transferred the motion without circumventing the statute; because petitioner's aggravated-assault conviction had been affirmed on direct appeal, and petitioner had not fulfilled his obligation to obtain leave from the supreme court to file a PCR motion, the chancery court could not transfer his petition for writ of error coram nobis. Clay v. State, 232 So. 3d 196, 2017 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 503 (Miss. 2017), cert. denied, 229 So. 3d 714, 2017 Miss. LEXIS 513 (Miss. 2017).

Pursuant to Miss. Code Ann. § 99-39-7, appellant was required to obtain permission from the Supreme Court to file the instant motion for postconviction (PCR) relief. Since appellant filed a direct appeal of his original sentence and conviction, and since appellant failed to obtain permission to file the PCR motion, the circuit court lacked jurisdiction over the motion. Washington v. State, 237 So. 3d 775, 2017 Miss. App. LEXIS 319 (Miss. Ct. App. 2017), cert. denied, 236 So. 3d 820, 2018 Miss. LEXIS 75 (Miss. 2018).

Chancery court properly dismissed defendant's complaint discovery because it was subsumed by the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 through 99-39-29) and was outside the chancery court's equity jurisdiction, defendant was obligated to obtain leave from the state supreme court before filing a postconviction relief motion since his convictions had been affirmed on direct appeal, and defendant's complaint could not be construed as a pleading where the court reporter did not fall under the definition of a "public body," and any tapes used to prepare an official transcript were not "public records." Copple v. State, 196 So. 3d 189, 2016 Miss. App. LEXIS 428 (Miss. Ct. App. 2016).

Circuit court lacked jurisdiction to consider the merits of appellant's motion for postconviction collateral relief because appellant failed to receive permission from the supreme court to file his motion in the trial court, and thus, the court of appeals also lacked jurisdiction to consider the appeal; because the court of appeals heard appellant's direct appeal of his convictions and sentences, appellant was required to seek and obtain the supreme court's permission to file his motion. Presley v. State, 176 So. 3d 158, 2015 Miss. App. LEXIS 515 (Miss. Ct. App. 2015).

Circuit court lacked jurisdiction to consider the merits of petitioner's motion because he did not receive permission from the Supreme Court to file the motion, and thus the court also lacked jurisdiction to consider the appeal. Edmond v. State, 141 So. 3d 58, 2014 Miss. App. LEXIS 356 (Miss. Ct. App. 2014).

As an inmate's conviction had been affirmed on direct appeal, the state's high court thereafter denied certiorari review, and the inmate failed to obtain permission from the high court under Miss. Code Ann. § 99-39-7 before filing his motion for post-conviction relief (PCR), the PCR court lacked jurisdiction to consider it, and the intermediate appellate court lacked jurisdiction to hear his appeal. Clay v. State, 168 So. 3d 987, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. 2013), cert. dismissed, 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Appellate court could not consider prisoner's appeal of the denial of his postconviction relief motion because the trial court had lacked jurisdiction to consider the motion because the motion was filed in the wrong county and the prisoner had failed to obtain permission to file the motion from the Mississippi Supreme Court. Nelson v. Bingham, 116 So. 3d 172, 2013 Miss. App. LEXIS 52 (Miss. Ct. App. 2013).

Where appellant was convicted of selling a Schedule II controlled substance, he was sentenced him to thirty years in custody without parole; the Mississippi Supreme Court ruled on his appeal. Because he did not seek leave of the Mississippi Supreme Court to file a motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-7, neither the circuit court nor the Court of Appeals of Mississippi had jurisdiction over his motion for post-conviction relief. Lacey v. State, 29 So. 3d 786, 2009 Miss. App. LEXIS 305 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 136 (Miss. Mar. 11, 2010).

Trial court had jurisdiction to rule on defendant's motion for postconviction relief because there was nothing in the record indicating that the Mississippi Supreme Court made any decision based upon the merits of the case; the Supreme Court's action in granting defendant's motion for voluntary dismissal of an appeal was merely procedural. Didon v. State, 7 So. 3d 978, 2009 Miss. App. LEXIS 190 (Miss. Ct. App. 2009).

Although the inmate received permission from the state supreme court to file a petition for post-conviction relief, the inmate never filed the petition in circuit court; because the post-conviction relief action was never properly commenced, the circuit court erred when it found that it had jurisdiction to decide the issue. Latiker v. State, 991 So. 2d 1239, 2008 Miss. App. LEXIS 591 (Miss. Ct. App. 2008).

Where the state supreme court found that appellant's motion for post-conviction relief was barred as a successive writ, the trial court lacked jurisdiction to entertain his request for post-conviction relief under Miss. Code Ann. § 99-39-7. The Court of Appeals of Mississippi also lacked jurisdiction to entertain an appeal of that action. Crosby v. State, 982 So. 2d 1003, 2008 Miss. App. LEXIS 311 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-9. Requirements of motion and service.

(1) A motion under this article shall name the State of Mississippi as respondent and shall contain all of the following:

(a) The identity of the proceedings in which the petitioner was convicted.

(b) The date of the entry of the judgment of conviction and sentence of which complaint is made.

(c) A concise statement of the claims or grounds upon which the motion is based.

(d) A separate statement of the specific facts which are within the personal knowledge of the petitioner and which shall be sworn to by the petitioner, including, when application is made pursuant to Section 99-39-5, a statement that there exists a reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through DNA testing at the time of the original prosecution; that the evidence to be tested was secured in relation to the offense underlying the challenged conviction and (i) was not previously subjected to DNA testing, or (ii) although previously subjected to DNA testing, can be subjected to additional DNA testing that provides a reasonable likelihood of more probative results; and that the chain of custody of the evidence to be tested established that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, that the testing itself has the potential to establish the integrity of the evidence. For purposes of this paragraph, evidence that has been in the custody of law enforcement, other government officials, or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement, absent specific evidence of material tampering, replacement or alteration, and that the application for testing is made to demonstrate innocence or the appropriateness of a lesser sentence and not solely to unreasonably delay the execution of sentence or the administration of justice.

(e) A specific statement of the facts which are not within the petitioner's personal knowledge. The motion shall state how or by whom said facts will be proven. Affidavits of the witnesses who will testify and copies of documents or records that will be offered shall be attached to the motion. The affidavits of other persons and the copies of documents and records may be excused upon a showing, which shall be specifically detailed in the motion, of good cause why they cannot be obtained. This showing shall state what the petitioner has done to attempt to obtain the affidavits, records and documents, the production of which he requests the court to excuse.

(f) The identity of any previous proceedings in federal or state courts that the petitioner may have taken to secure relief from his conviction and sentence.

(2) A motion shall be limited to the assertion of a claim for relief against one (1) judgment only. If a petitioner desires to attack the validity of other judgments under which he is in custody, he shall do so by separate motions.

(3) The motion shall be verified by the oath of the petitioner.

(4) If the motion received by the clerk does not substantially comply with the requirements of this section, it shall be returned to the petitioner if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the motion so returned.

(5) The petitioner shall deliver or serve a copy of the motion, together with a notice of its filing, on the state. The filing of the motion shall not require an answer or other motion unless so ordered by the court under Section 99-39-11(3).

HISTORY: Laws, 1984, ch. 378, § 5; Laws, 2009, ch. 339, § 4, eff from and after passage (approved Mar. 16, 2009).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(d) by inserting the word "and" so that ". . . results; that the chain of custody of the evidence to be tested . . . ” reads “. . . results; and that the chain of custody of the evidence to be tested . . . ” The Joint Committee ratified the correction at its July 13, 2009, meeting.

Cross References — Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Absence of supporting affidavits.
3. Supporting affidavit not considered.
4. One motion for each judgment.
5. Court error.
6. Procedural bar.
7. Motion properly denied.

1. In general.

In an appeal of a circuit court's denial of appellant's post-conviction petition for an out-of-time appeal, the appellate court noted the circuit court did not address whether appellant was entitled to an out-of-time appeal under the Uniform Post-Conviction Collateral Relief Act. The appellate court directed the trial judge to determine whether appellant's petition met the requirements of Miss. Code Ann. § 99-39-9 and stated a ground for relief. Pulliam v. State, 282 So. 3d 734, 2019 Miss. App. LEXIS 385 (Miss. Ct. App. 2019).

To the extent that information obtained pursuant to the rule's discovery mechanism is relevant to a petition for post-conviction relief, it must be attached to the petition, at which time the State will have access to it; if the petitioner is able to demonstrate a substantial showing of the denial of a state or federal right and is allowed to proceed to the trial court, the State is allowed access to the full spectrum of civil discovery, which it may employ to prepare and defend its case. Corrothers v. State, 189 So. 3d 612, 2015 Miss. LEXIS 468 (Miss. 2015).

Because petition did not specifically identify in his application for post-conviction relief the proceeding by cause number or reference facts necessary to identify a particular cause number, it would have been proper for the trial court to dismiss the petition on that basis alone; the petition stated that it stemmed from petitioner's guilty plea and conviction for the offense of armed robbery in which the trial court sentenced petitioner to serve a term of forty years. Mosley v. State, 150 So. 3d 127, 2014 Miss. App. LEXIS 613 (Miss. Ct. App. 2014), cert. dismissed, 158 So. 3d 1153, 2015 Miss. LEXIS 155 (Miss. 2015).

Defendant's challenge to the voluntariness of defendant's guilty pleas, which defendant asserted for the first time during the evidentiary hearing on defendant's post-conviction relief (PCR) motion, was not properly before the court because defendant's PCR motion did not contain any claim that defendant's pleas were involuntary. Norris v. State, 162 So. 3d 833, 2014 Miss. App. LEXIS 502 (Miss. Ct. App. 2014).

In a case in which a pro se inmate argued that a circuit court improperly found that his second post-conviction relief petition was successive because his first petition did not comply with the Mississippi Uniform Post-Conviction Collateral Relief Act, circuit courts had discretion to consider post-conviction relief petitions that did not comply with Miss. Code Ann. § 99-39-9. The mere technical deficiencies in a post-conviction relief petition did not mandate that it be returned to the inmate. Robinson v. State, 19 So. 3d 140, 2009 Miss. App. LEXIS 649 (Miss. Ct. App. 2009), cert. dismissed, 107 So. 3d 998, 2013 Miss. LEXIS 79 (Miss. 2013).

Trial court did not err in refusing to allow appellant to present claims that were not contained in his post-conviction relief (PCR) motion or a timely motion to amend because the PCR the PCR statutes did not provide an unfettered right to present claims not alleged in the PCR motion. Brandon v. State, 108 So. 3d 999, 2013 Miss. App. LEXIS 67 (Miss. Ct. App. 2013).

Normally it was the duty and responsibility of the state to present arguments that refuted the inmate's motion for post-conviction relief and the state did not raise the issue below, nor did it raise it in its current brief; generally, the appellate court would decline to reach the state's argument that the inmate's petition was a successive writ; however, the state did not have an opportunity to respond and raise that defense because the trial judge summarily dismissed the inmate's motion without requiring an answer by the state. Knight v. State, 959 So. 2d 598, 2007 Miss. App. LEXIS 444 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 538 (Miss. 2007).

Appellate court only considered one case in a petition for post-conviction relief where defendant filed one motion to cover both a jury trial and a guilty plea to two counts of the sale of cocaine. Shorter v. State, 946 So. 2d 815, 2007 Miss. App. LEXIS 2 (Miss. Ct. App. 2007).

Court is not always required to return a post-conviction relief motion that fails to comply with statutory requirements, and therefore a motion that did not contain a concise statement of the statement or grounds upon which the motion was based, as required by Miss. Code Ann. § 99-39-9(1)(c), and did not state a claim upon which relief could have been granted under Miss. Code Ann. § 99-39-5(1), was properly not returned; the determination of whether to return the motion to defendant was left to the trial court since it did not comply with the statutory requirements, and it could not have survived a dismissal under Miss. Code Ann. § 99-39-11(2). Adams v. State, 962 So. 2d 640, 2007 Miss. App. LEXIS 38 (Miss. Ct. App. 2007).

Circuit court did not err in refusing to grant defendant's request for designation of the record under Miss. R. App. P. 10(b)(1) where, pursuant to Miss. Code Ann. § 99-39-5, his desire to pursue a civil action was not a ground for relief; the request failed to comply with Miss. Code Ann. § 99-39-9. Willis v. State, 950 So. 2d 200, 2006 Miss. App. LEXIS 713 (Miss. Ct. App. 2006).

Defendant failed to provide the appellate court with affidavits of those who would testify to the assertions he made within his brief on appeal, and he failed to provide the appellate court with his own affidavit, as required by statute; the appellate court could only consider those facts that were found in the record, and could not rely on mere allegations contained within a petitioner's brief. Barnes v. State, 937 So. 2d 1006, 2006 Miss. App. LEXIS 676 (Miss. Ct. App. 2006).

Prisoner's allegation of ineffective assistance of counsel lacked the specificity and detail required to establish a prima facie showing under Miss. Code Ann. §§ 99-39-11(2) and 99-39-9(1)(c); although the prisoner alleged that his counsel failed to call any witnesses and failed to subject the prosecution's case to meaningful adversarial testing, the prisoner did not name any witnesses and did not specify any testimony which might have been offered in his favor. Bishop v. State, 882 So. 2d 135, 2004 Miss. LEXIS 773 (Miss. 2004), cert. denied, 543 U.S. 1189, 125 S. Ct. 1401, 161 L. Ed. 2d 194, 2005 U.S. LEXIS 2123 (U.S. 2005).

Court refused to consider an affidavit by a social work intern concerning statements supposedly made by a juror because it was not a proper affidavit under Miss. Code Ann. § 99-39-9(1)(e). Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate failed to show, in connection with the inmate's capital murder trial, any prejudicial jury misconduct as alleged in an affidavit submitted under Miss. Code Ann. § 99-39-9(1)(e); while the affidavit stated that some jurors heard that the inmate's co-defendant had committed a rape in the past, there was no allegation that the jurors came to their decision based on a rape allegation against co-defendant. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Jurors were not prohibited, in connection with the sentencing phase of an inmate's capital murder trial, from discussing among themselves whether parole was a possibility because they were instructed correctly; furthermore, the jury knew that if the inmate was sentenced to life, the inmate would never be paroled, and thus little stock could be put in the affidavits, submitted under Miss. Code Ann. § 99-39-9(1)(e), that said that the jurors were concerned that the inmate would be paroled one day. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Court rejected the State's argument that the inmate failed to comply with the requirements of Miss. Code Ann. § 99-39-11(3); (1) first, the court found no requirement of verification in the statute, and (2) while verification of the motion to vacate death sentence was required by Miss. Code Ann. § 99-39-9(3), and absent substantial compliance with Miss. Code Ann. § 99-39-9(4), a prisoner faced possible dismissal of an application, the court found nothing to be gained in this instance in returning the inmate's motion and application filed under Miss. Code Ann. § 99-39-27 for verification. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

Petitioner was not entitled to postconviction relief upon asserting that the plea made was involuntary where the trial court questioned petitioner, in compliance with Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A), and petitioner responded that: (1) petitioner had fully discussed the case with counsel, including the elements of the offense and any possible defenses, (2) petitioner was satisfied with the services rendered by counsel, (3) petitioner understood the specific rights available and that a guilty plea waived those rights, and (4) petitioner had committed the charged offense. Petitioner's assertion of incorrect advice as to parole eligibility was inconsistent and conclusory and did not suffice as an ineffective assistance claim. Sutton v. State, 873 So. 2d 120, 2004 Miss. App. LEXIS 106 (Miss. Ct. App. 2004).

Defendant would not be successful on an appeal strictly for postconviction relief because his motion did not technically comply with the requirements of the pleading since there was not a separate statement of facts of which defendant had knowledge, and there was no separate statement of facts which defendant asserted but did not himself have knowledge of, and how they could be proven; the judge could have refused to hear defendant's motion because of its noncompliance. Carr v. State, 881 So. 2d 261, 2003 Miss. App. LEXIS 988 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 863 (Miss. 2004).

Defendant's letter request to the trial court concerning possible sentencing credits did not comport with the procedural requirements of Miss. Code Ann. § 99-39-9. Cox v. State, 856 So. 2d 679, 2003 Miss. App. LEXIS 657 (Miss. Ct. App. 2003).

Trial court acted properly in dismissing defendant's motion for postconviction relief raising claims of ineffective assistance of counsel, that the indictment charging defendant with automobile burglary and escape was defective, and that the statutes under which defendant was charged, convicted, and sentenced were unconstitutional, where the claims were general in nature and were unsupported by evidence; trial court was not required to conduct an evidentiary hearing. Spearman v. State, 840 So. 2d 823, 2003 Miss. App. LEXIS 230 (Miss. Ct. App. 2003).

Where, as part of guilty plea, defendant admitted committing the essential elements of the crime, defendant waived any challenge to indictment as defective for stating the wrong date on which the offense was committed. Shinall v. State, 832 So. 2d 1291, 2002 Miss. App. LEXIS 859 (Miss. Ct. App. 2002).

Defendant's claims in a motion for postconviction relief that he was denied effective assistance of counsel in pleading guilty to two counts of transferring cocaine were insufficiently pled where defendant did not allege how his attorney had coerced him into pleading guilty, misrepresented the facts of his case, had been unprepared for trial, and had conspired with the State to cover up the fact that he was not prepared. Terry v. State, 839 So. 2d 543, 2002 Miss. App. LEXIS 699 (Miss. Ct. App. 2002).

Trial court did not abuse its discretion in dismissing defendant's motion for postconviction relief from conviction of capital murder and conspiracy without holding an evidentiary hearing as defendant's motion did not present any facts showing that defendant had received ineffective assistance of counsel in entering guilty pleas. Porter v. State, 824 So. 2d 650, 2002 Miss. App. LEXIS 459 (Miss. Ct. App. 2002).

A motion for postconviction relief must contain a concise statement of the claims or grounds upon which the motion is based. Eaton v. State, 817 So. 2d 630, 2002

Miss. App. LEXIS 301 (Miss. Ct. App. 2002).

Trial court did not abuse its discretion in denying defendant's motion for postconviction relief from his conviction for escape without a hearing where defendant's motion did not allege facts showing defendant was entitled to relief. Knichel v. State, 824 So. 2d 659, 2002 Miss. App. LEXIS 460 (Miss. Ct. App. 2002).

A motion for post-conviction relief was insufficient to meet the requirements of the statute where, with regard to his claim of ineffective assistance of counsel, defendant merely asserted that he was "mislead, misinformed and misrepresented in this matter," but did not allege with any specificity how defense counsel misinformed him. Kinney v. State, 737 So. 2d 1038, 1999 Miss. App. LEXIS 63 (Miss. Ct. App. 1999).

Petitioner's post-conviction claim that he received ineffective assistance of counsel when pleading guilty to felony jail escape was deficient and properly dismissed without evidentiary hearing, where petitioner's affidavit did not track statutory requirements for supporting affidavit and was sole evidentiary support for claim, he presented no other evidence that he escaped from work detail instead of jail, and he did not state how his attorney's performance, in relating state's offer to drop aggravated assault charge in return for guilty plea, was deficient. Robertson v. State, 669 So. 2d 11, 1996 Miss. LEXIS 68 (Miss. 1996).

A defendant's post-conviction claim of ineffective assistance of counsel, which was based on allegations that the defendant's counsel failed to object to allegedly defective indictments and erroneously advised the defendant to plead guilty, was properly dismissed without the benefit of an evidentiary hearing because it was manifestly without merit where the defendant failed to allege with the "specificity and detail" required that his counsel's performance was deficient and that the deficient performance prejudiced the defense, the facts alleged and the brief submitted were not supported by any affidavits other than his own, the indictments were not defective and therefore the defendant's counsel could not be faulted for failing to challenge their validity, and the defendant failed to identify the "deficient and erroneous advice" of his counsel that allegedly resulted in his pleas of guilty. Brooks v. State, 573 So. 2d 1350, 1990 Miss. LEXIS 776 (Miss. 1990).

Motion for post-conviction relief to vacate conviction and sentence for murder on grounds of ineffective assistance of counsel was denied where petitioner failed to meet the statutory requirement of furnishing affidavits in support of his allegations. Smith v. State, 490 So. 2d 860, 1986 Miss. LEXIS 2487 (Miss. 1986).

2. Absence of supporting affidavits.

Defendant's claims that the trial court did not have jurisdiction to accept defendant's guilty plea and that counsel provided ineffective assistance were unsupported and without merit because defendant was required to furnish affidavits to support defendant's claims or show cause why defendant could not furnish them. However, defendant failed to do either. Moore v. State, 250 So. 3d 521, 2018 Miss. App. LEXIS 317 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 99 (Miss. 2019).

Since appellant pleaded guilty, the motion for reconsideration of the judgment dismissing his motion for post-conviction relief and the affidavit were submitted after the three-year statute of limitations for filing a motion for post-conviction relief had passed, Miss. Code Ann. § 99-39-5; despite the fact that appellant's arguments were first raised outside the three-year statute of limitations, his self-serving affidavit did not meet the requirements of the post-conviction-relief statute, Miss. Code Ann. § 99-39-9(1)(e), because appellant failed to provide supporting affidavits other than his own to prove his plea bargain was for a sentence of life with parole. Collier v. State, 112 So. 3d 1088, 2013 Miss. App. LEXIS 221 (Miss. Ct. App. 2013).

Petitioner for post-conviction relief failed to support his claim of ineffective assistance of counsel because he failed to attach any affidavits, other than his own. Harris v. State, 17 So. 3d 1115, 2009 Miss. App. LEXIS 152 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 452 (Miss. 2009).

Post-conviction relief was denied to appellant inmate in a case where he pled guilty to credit card fraud and possession of cocaine because he did not show that he received deficient performance; there was a factual basis for the plea, the inmate indicated that he was satisfied with the performance of his counsel, and no evidence was presented to show any deficiencies. Moreover, the inmate's post-conviction relief motion lacked any supporting affidavits or other proof to support his allegation of ineffectiveness of counsel. Shies v. State, 19 So. 3d 770, 2009 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 504 (Miss. 2009).

When appellant sought post-conviction relief on the basis of ineffective assistance of counsel in connection with his plea of guilty to murder, he did not attach any supporting affidavits to his motion for post-conviction relief; nor did he name any potential witnesses that counsel could have interviewed. Because appellant's petition did not comply with Miss. Code Ann. § 99-39-9(1)(e), the trial court did not err by dismissing his claim of ineffective assistance of counsel. Smith v. State, 1 So. 3d 937, 2009 Miss. App. LEXIS 23 (Miss. Ct. App. 2009).

Circuit court's denial of an inmate's pro se motion for post-conviction relief was not clearly erroneous because the inmate did not provide affidavits of any of the witnesses that he claimed would support his allegations that domestic assault charges were dismissed, nor did he offer any explanation as to why he failed to do so as required by Miss. Code Ann. § 99-39-9(1)(e). Alexander v. State, 996 So. 2d 819, 2008 Miss. App. LEXIS 742 (Miss. Ct. App. 2008).

Where appellant entered a plea of guilty to grand larceny, he filed a petition for postconviction relief (PCR) in which he argued that his attorney's misrepresentation about the State's sentencing recommendation constituted ineffective assistance of counsel; however, he attached no affidavits to his PCR motion supporting his claim that counsel advised him that the State would recommend a five-year sentence. Because he did not comply with Miss. Code Ann. § 99-39-9(1)(e), the post-conviction court's rejection of appellant's ineffective assistance of counsel claim was not clearly erroneous. Myles v. State, 988 So. 2d 436, 2008 Miss. App. LEXIS 470 (Miss. Ct. App. 2008).

Trial judge did not err in summarily dismissing defendant's post-conviction claim of ineffective assistance of counsel because defendant only offered bare assertions as proof that defendant was denied effective assistance of counsel; defendant provided no affidavits or proposed testimony of other witnesses to support the contentions. Edwards v. State, 995 So. 2d 824, 2008 Miss. App. LEXIS 474 (Miss. Ct. App. 2008).

Trial court properly dismissed defendant's motion for post-conviction relief without prejudice where the motion did not contain either an affidavit of facts within defendant's personal knowledge to support the motion or a sworn oath by defendant, as required by Miss. Code Ann. § 99-39-9(1)(d), and (3). Taylor v. State, 984 So. 2d 372, 2008 Miss. App. LEXIS 355 (Miss. Ct. App. 2008).

Trial court did not err in considering the merits of defendant's motion for post-conviction relief where the only evidence offered by defendant in support of his claims of error were the factual assertions found in defendant's petition; consequently, the trial court summarily dismissed defendant's petition, holding that defendant's factual assertions were contradicted by the record. Keith v. State, 999 So. 2d 383, 2008 Miss. App. LEXIS 313 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 52 (Miss. 2009).

Denial of a petition for post-conviction relief based on a guilty plea to the charge of manslaughter was not overturned on appeal due to defendant's insufficient brief, failure to cite authority, insufficient record, and lack of affidavits, in violation of Miss. Code Ann. § 99-39-9(1)(e) and Miss. R. App. P. 28(a)(6). Hill v. State, 940 So. 2d 972, 2006 Miss. App. LEXIS 785 (Miss. Ct. App. 2006).

Inmate's petition for post-conviction relief substantially complied with Miss. Code Ann. § 99-39-9 even though the motion did not contain a sworn statement of facts. Ford v. State, 911 So. 2d 1007, 2005 Miss. App. LEXIS 671 (Miss. Ct. App. 2005).

Where appellant failed to include supporting affidavits, documents, and records to prove the facts in his petition for postconviction relief, the circuit court found that the petition did not meet the requirements of Miss. Code Ann. § 99-39-9. Therefore, the summary dismissal of the petition was proper. Winston v. State, 893 So. 2d 274, 2005 Miss. App. LEXIS 111 (Miss. Ct. App. 2005).

Appellant's claim that she had received ineffective assistance of counsel because her counsel failed to summon two mental health professionals who would have testified on appellant's behalf during her sentencing on her conviction of two counts of arson lacked evidentiary support as required under Miss. Code Ann. § 99-39-9, where her petition for postconviction relief failed to incorporate an affidavit attesting to facts outside of appellant's personal knowledge. Consequently, appellant failed to meet the statutory requirement for postconviction relief motions. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

Where an inmate failed to include in his petition for postconviction relief the copies of the letters from co-defendants that purportedly exonerated him from the crimes to which he had pleaded guilty, the denial of the inmate's petition for postconviction relief was affirmed. Donnelly v. State, 887 So. 2d 833, 2004 Miss. App. LEXIS 881 (Miss. Ct. App. 2004).

Appellant's claim that her sentencing was based on perjured testimony provided by the victims lacked evidentiary support as required under Miss. Code Ann. § 99-39-9 (Supp.) where appellant's petition for postconviction relief did not incorporate an affidavit attesting to facts outside appellant's personal knowledge. Appellant's allegations that she did not know what the victims told the judge during sentencing but that she knew that they would tell the judge lies did not warrant an evidentiary hearing. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

Where an inmate offered no proof that an attorney failed to conduct an investigation, did not file certain motions, and encouraged him to plead guilty to manslaughter, a claim of ineffective assistance of counsel was properly denied in a motion seeking postconviction relief. Young v. State, 877 So. 2d 552, 2004 Miss. App. LEXIS 669 (Miss. Ct. App. 2004).

Defendant failed to show how his trial counsel's failure to call certain alibi witnesses was ineffective representation as the inmate failed to identify by the name the witnesses that were to be called and affidavits of what the witnesses would state. Bell v. State, 879 So. 2d 423, 2004 Miss. LEXIS 543 (Miss. 2004), cert. denied, 543 U.S. 1155, 125 S. Ct. 1301, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1594 (U.S. 2005).

Inmate's postconviction relief petition was properly denied because the inmate did not produce affidavits to show that defense counsel had failed to investigate two drug charges and to interview witnesses in the case before advising the inmate to plead guilty; moreover, the inmate had given a sworn statement contradicting these complaints at the plea hearing. Steen v. State, 868 So. 2d 1038, 2004 Miss. App. LEXIS 8 (Miss. Ct. App. 2004).

Petitioner failed to furnish affidavits or show cause why he could not furnish affidavits to support his claims that he was shackled in front of the jury, as required by Miss. Code Ann. §§ 99-39-9(1)(e) and 11-1-1; although the petitioner referred to statements as "affidavits," they had not been notarized before any official. Wilcher v. State, 863 So. 2d 719, 2003 Miss. LEXIS 526 (Miss. 2003), cert. denied, 542 U.S. 942, 124 S. Ct. 2917, 159 L. Ed. 2d 821, 2004 U.S. LEXIS 4678 (U.S. 2004).

Inmate failed to demonstrate that he was deprived effective assistance of counsel by his attorney's failure to effectively subpoena a witness to trial as the inmate did not provide in his petition an affidavit of what the witness's proposed testimony would be. Jefferson v. State, 855 So. 2d 1012, 2003 Miss. App. LEXIS 853 (Miss. Ct. App. 2003).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, defendant testified under oath that he understood what he was doing and that his mind was clear, and, additionally, he did not produce any supporting affidavits to the appellate court to establish his alleged mental deficiency, as required by Miss. Code Ann. § 99-39-9(e); thus, the trial judge did not abuse her discretion in not ordering, upon her own motion, a psychiatric evaluation of defendant pursuant to Miss. Code Ann. § 99-13-11 because she determined that the accused was competent to understand the nature of the charges as required by Miss. Unif. Cir. & County Ct. Prac. R. 8.04(4)(a) and defendant's motion for post-conviction relief was denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

Petitioner failed to attach an affidavit stating that counsel told him that the prosecutor and the judge agreed that he would not have to register as a sex offender, as required by Miss. Code Ann. § 99-39-9(1)(e). Payton v. State, 845 So. 2d 713, 2003 Miss. App. LEXIS 398 (Miss. Ct. App.), cert. denied, 859 So. 2d 392, 2003 Miss. LEXIS 436 (Miss. 2003), cert. denied, 540 U.S. 1078, 124 S. Ct. 931, 157 L. Ed. 2d 751, 2003 U.S. LEXIS 9076 (U.S. 2003).

Defendant was unsuccessful in his petition for postconviction relief based on an alleged ineffective assistance of trial counsel because he failed to produce affidavits, other than his own, in support of his allegations. Newson v. State, 816 So. 2d 1035, 2002 Miss. App. LEXIS 255 (Miss. Ct. App. 2002).

A motion for postconviction relief was inadequate where it did not include an affidavit, or the names of anticipated witnesses, or the substance of their testimony. Laushaw v. State, 791 So. 2d 854, 2001 Miss. App. LEXIS 225 (Miss. Ct. App. 2001).

Motions for postconviction relief were required to be pled with specificity and to include affidavits that stated facts and how or by whom those facts would be proven. Banks v. State, 796 So. 2d 291, 2001 Miss. App. LEXIS 391 (Miss. Ct. App. 2001), withdrawn by ordered by publisher.

A claim by the defendant that he was coerced to plead guilty by his trial counsel was insufficient to entitle him to a hearing where he filed no affidavit on specific acts of coercion by his counsel. Cockrell v. State, 811 So. 2d 305, 2001 Miss. App. LEXIS 15 (Miss. Ct. App. 2001).

The fact that no affidavits are submitted with a prisoner's postconviction relief motion does not in and of itself render the motion invalid. Lewis v. State, 776 So. 2d 679, 2000 Miss. LEXIS 234 (Miss. 2000).

Where the defendant failed to produce any documentation corroborating his claim or show good cause as to why documentation could not be obtained, the circuit court properly denied his motion for postconviction relief. Tate v. State, 767 So. 2d 1045, 2000 Miss. App. LEXIS 438 (Miss. Ct. App. 2000).

The defendant failed to comply with subsection (1)(e) in connection with his petition for postconviction relief where he failed to submit any additional affidavits and failed to instruct the trial court of how or by whom he would prove the facts on which he based his claim of ineffective assistance of counsel. Anderson v. State, 766 So. 2d 133, 2000 Miss. App. LEXIS 410 (Miss. Ct. App. 2000).

The trial court properly denied postconviction relief where the motion for relief did not contain an affidavit or the names of anticipated witnesses or the substance of their testimony, no affidavits were submitted by the anticipated witnesses, and the petitioner provided only general, rather than specific, statements in his motion. Cooley v. State, 765 So. 2d 614, 2000 Miss. App. LEXIS 393 (Miss. Ct. App. 2000).

Where facts alleged in appellant's petition and brief were not supported by any affidavits of testifying witnesses, the petition was properly dismissed. Walton v. State, 752 So. 2d 452, 1999 Miss. App. LEXIS 692 (Miss. Ct. App. 1999).

A motion for post-conviction relief is not properly denied based solely on the fact that there are no supporting affidavits; if there are no witnesses to the allegations asserted by the appellant, there is no requirement for supporting affidavits. Instead, the appellant may attest to the facts that he intends to prove through his petition. Ford v. State, 708 So. 2d 73, 1998 Miss. LEXIS 60 (Miss. 1998).

3. Supporting affidavit not considered.

Probationer's self-serving affidavits in support of the probationer's application for post-conviction relief from the revocation of the probationer's probation did not meet the requirements of Miss. Code Ann. § 99-39-9. Moreover, an affidavit by the probationer's parent did little more than restate the probationer's claim that the probationer was misled and fell well short of potentially proving the probationer's claim. Hall v. State, 189 So. 3d 631, 2014 Miss. App. LEXIS 41 (Miss. Ct. App. 2014).

Affidavit of defendant's father which was attached to defendant's post-conviction motion for collateral relief asserting ineffective assistance of counsel was not considered by the court because the affidavit was hearsay. The father stated that a public defender advised him after defendant was sentenced that the public defender's office had not done an adequate job of representing defendant. Magyar v. State, 18 So. 3d 851, 2008 Miss. App. LEXIS 558 (Miss. Ct. App. 2008), aff'd, 18 So. 3d 807, 2009 Miss. LEXIS 388 (Miss. 2009).

4. One motion for each judgment.

Court of Appeals erred in affirming the denial of defendant's petition for post-conviction relief because the circuit court lacked jurisdiction and authority to accept his guilty pleas when he never had been charged with a crime, the Legislature did not have power to limit the number of claims that could be pled in a particular pleading, the docket sheet reflected that no criminal information—even assuming one existed—ever was filed with the circuit court, and the criminal files did not include any charging document. Ashwell v. State, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

Although the convictions which defendant challenged in a motion for post-conviction relief stemmed from several indictments and lower court cause numbers, the error in not filing separate motions was harmless when the motions were found to be without merit. McDonald v. State, 204 So. 3d 780, 2016 Miss. App. LEXIS 583 (Miss. Ct. App.), cert. denied, 205 So. 3d 1085, 2016 Miss. LEXIS 498 (Miss. 2016).

Appellant's motion for post-conviction relief (PCR) violated the requirement of Miss. Code Ann. § 99-39-9 that a motion could only attack one judgment because appellant's singular motion attacked four convictions in two separate cause numbers following both guilty verdicts and a guilty plea; however, the trial court did not err in considering appellant's single PCR motion because it found that there was no merit to the motion. Brandon v. State, 108 So. 3d 999, 2013 Miss. App. LEXIS 67 (Miss. Ct. App. 2013).

Defendant's motion for post-conviction DNA testing was properly dismissed because he challenged three guilty plea judgments while Miss. Code Ann. § 99-39-9(2) (2010) provided that such a motion had to be limited to one judgment. Also, there was no existing biological evidence available for testing as required by Miss. Code Ann. § 99-39-5(2)(a)(ii) (2005). Howard v. State, 62 So. 3d 995, 2011 Miss. App. LEXIS 271 (Miss. Ct. App. 2011).

Trial court properly dismissed the inmate's motion for post-conviction relief as being barred as a successive writ under Miss. Code Ann. § 99-39-23(6) because he already attacked the validity of his two burglary convictions in a previous post-conviction relief motion. In his first motion for post-conviction relief, the inmate incorrectly appealed both of his convictions in one motion instead of two as required by Miss. Code Ann. § 99-39-9(2), but the trial court agreed to hear both appeals rather than requiring two separate motions. In the instant motion, the inmate attacked the same two judgments he had previously addressed in his first post-conviction motion. There was no merit to the inmate's contention that his first post-conviction motion attacked only one burglary conviction and that the instant motion attacked the second conviction. Christie v. State, 996 So. 2d 81, 2008 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 627 (Miss. 2008).

Even though defendant was technically required to file different motions for post-conviction relief for separate judgments, an appellate court proceeded to hear issues from two interrelated cases; defendant's sentencing hearing on one case was also a plea hearing in a different case. Nichols v. State, 955 So. 2d 962, 2007 Miss. App. LEXIS 279 (Miss. Ct. App. 2007).

Petitioner's appeal of an order denying his motion for post-conviction relief was dismissed without prejudice where the judgments against him were separate convictions carrying separate sentences; under Miss. Code Ann. § 99-39-9(2), petitioner was unable to collaterally attack all of the judgments against him in one motion for post-conviction relief. McCoy v. State, 941 So. 2d 879, 2006 Miss. App. LEXIS 828 (Miss. Ct. App. 2006).

Because separate judgments were rendered in three causes, defendant was procedurally barred, pursuant to Miss. Code Ann. § 99-39-9(2), from challenging the validity of his guilty pleas to two charges in his motion for post-conviction relief where the motion only concerned his conviction by a jury for possession of marijuana. Hargrove v. State, 937 So. 2d 29, 2006 Miss. App. LEXIS 537 (Miss. Ct. App. 2006).

Even if defendant may challenge both sentences arising from two different convictions, he would need to file two motions for post-conviction relief. Burns v. State, 933 So. 2d 329, 2006 Miss. App. LEXIS 495 (Miss. Ct. App. 2006).

Where a trial court entered two separate judgments, on two separate dates, for the two charges that an appellant pled guilty to at her plea hearing, the appellant could not collaterally attack both judgments in the same motion for post-conviction relief. Smith v. State, 919 So. 2d 989, 2005 Miss. App. LEXIS 426 (Miss. Ct. App. 2005).

In a case where petitioner sought post-conviction relief after his probation had been revoked, his second and third assignments of error had to be dismissed because petitioner challenged two counts of which he was convicted in the same petition, as the second and third assignments of error addressed the validity of the judgment entered against him pursuant to his guilty plea of receiving stolen property. Newsom v. State, 904 So. 2d 1095, 2004 Miss. App. LEXIS 396 (Miss. Ct. App. 2004).

Miss. Code Ann. § 99-39-9(2) limited postconviction relief review to a single judgment, requiring defendant to file one postconviction relief motion for each challenged judgment. Readus v. State, 837 So. 2d 209, 2003 Miss. App. LEXIS 42 (Miss. Ct. App. 2003).

Defendant's petition for postconviction relief was properly denied where he challenged his guilty plea to three drug counts in one petition. By statute, defendant could only challenge one count in one petition. Miss. Code Ann. § 99-39-9(2). Shaw v. State, 803 So. 2d 1282, 2002 Miss. App. LEXIS 16 (Miss. Ct. App. 2002).

5. Court error.

Defendant's amended motion and memorandum of law contained sworn, specific allegations of fact that attacked his cocaine sales conviction, as required by Miss. Code Ann. § 99-39-9(1)(d); the lower court erred in finding that defendant failed to allege flaws in his cocaine sales conviction because he clearly did so in his motion and memorandum of law, such that the appellate court proceeded to the merits of defendant's arguments concerning his cocaine sales plea. Thomas v. State, 881 So. 2d 912, 2004 Miss. App. LEXIS 504 (Miss. Ct. App. 2004).

Trial court erred by summarily dismissing defendant's postconviction relief motion where it and an accompanying affidavit of his mother raised an issue as to the voluntariness of his guilty plea due to incorrect legal advice regarding the length of his sentence and whether he had received ineffective assistance of counsel. Readus v. State, 837 So. 2d 209, 2003 Miss. App. LEXIS 42 (Miss. Ct. App. 2003).

6. Procedural bar.

Circuit court properly denied petitioner's motion for post-conviction relief because petitioner was procedurally barred from claiming that his guilty plea was involuntary because the waiver of indictment did not list the date of the offense. Ashwell v. State, 225 So. 3d 1258, 2016 Miss. App. LEXIS 372 (Miss. Ct. App. 2016), rev'd, vacated, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

Appellant was procedurally barred from challenging his manslaughter conviction because he failed to file his post-conviction relief motion within three years of entering his guilty plea pursuant to Miss. Code Ann. § 99-39-5(2); because Miss. Code

Ann. § 99-39-9(2) required separate motions for separate convictions, each of appellant's convictions was subject to its own time-bar under § 99-39-5(2), and many of the issues raised in the appeal were barred since they related solely to the manslaughter conviction. Brandon v. State, 108 So. 3d 999, 2013 Miss. App. LEXIS 67 (Miss. Ct. App. 2013).

Trial court's authority to grant an out-of-time appeal was not implicated because the trial court did not consider defendant's motion under the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), and defendant's motion did not invoke the UPCCRA or make any attempt at compliance with the UPCCRA's pleading requirements, Miss. Code Ann. § 99-39-9. Dorsey v. State, 986 So. 2d 1080, 2008 Miss. App. LEXIS 428 (Miss. Ct. App. 2008).

Defendant's motion for post-conviction relief (PCR) could attack only one of the judgments; since defendant's armed robbery conviction was without the possibility of parole, trusty time, or earned time, and was the more onerous of the two convictions, defendant's PCR was limited to the assertion of relief against his judgment of convictions of Count II, armed robbery. Adams v. State, 954 So. 2d 1051, 2007 Miss. App. LEXIS 244 (Miss. Ct. App. 2007).

Defendant's sentence after pleading guilty to one count of sale of a controlled substance and one count of conspiracy was proper where his sentence was only one-fifth of the maximum permitted, Miss. Code Ann. §§ 41-29-139(b)(1), 97-1-1(h); further, he failed to object to the sentence imposed upon him by the trial court and was attempting to attack his conspiracy and sale convictions in one post-conviction filing that was not permitted, Miss. Code Ann. § 99-39-9(2), therefore, his claim was not properly presented and was procedurally barred. McMinn v. State, 867 So. 2d 268, 2004 Miss. App. LEXIS 187 (Miss. Ct. App. 2004).

7. Motion properly denied.

Circuit court erred by dismissing appellant's post-conviction relief (PCR) motion based on Miss. Code Ann. § 99-39-9(2). However, because a PCR motion was not a proper vehicle for appellant to challenge the Department of Corrections' calculation of credit for time served, the circuit court correctly dismissed appellant's PCR motion, albeit for the wrong reason. Easterling v. State, 283 So. 3d 1198, 2019 Miss. App. LEXIS 196 (Miss. Ct. App.), cert. denied, 283 So. 3d 735, 2019 Miss. LEXIS 431 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 457 (Miss. 2019).

Circuit court properly denied petitioner's motion for post-conviction relief because it was within the circuit court's discretion to find that a bill of information for escape existed based on statements in the waiver of indictment, the guilty-plea petition, and the transcript of the guilty-plea hearing. Ashwell v. State, 225 So. 3d 1258, 2016 Miss. App. LEXIS 372 (Miss. Ct. App. 2016), rev'd, vacated, 226 So. 3d 69, 2017 Miss. LEXIS 341 (Miss. 2017).

Circuit court did not abuse its discretion when it denied appellant's alternative request for additional time to comply with Miss. Code Ann. § 99-39-9(3) or, alternatively, to renew the time to file another petition for postconviction relief; as noted by the circuit court, appellant did not need the circuit court's permission to file another petition. Davis v. State, 146 So. 3d 1033, 2014 Miss. App. LEXIS 493 (Miss. Ct. App. 2014).

Pursuant to Miss. Code Ann. § 99-39-9(1)(e), 99-39-11(2), defendant's motion for postconviction relief was properly dismissed without an evidentiary hearing because an alleged confession by defendant's brother was not sworn under oath, and defendant did not show why the brother could not have testified during defendant's trial, which meant that the confession was not newly discovered. Johnson v. State, 110 So. 3d 353, 2013 Miss. App. LEXIS 132 (Miss. Ct. App. 2013).

Trial judge was authorized to dismiss an inmate's motion for postconviction relief without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) as after reviewing the Miss. Code Ann. § 99-39-9(1) materials, the trial judge found that the inmate's argument for a hearing was largely an attempt to reargue the inmate's ineffective assistance of counsel and involuntary guilty plea issues that had been rejected. Holder v. State, 69 So. 3d 54, 2011 Miss. App. LEXIS 356 (Miss. Ct. App. 2011).

While an inmate submitted statements and affidavits of witnesses with a postconviction relief motion as required by Miss. Code Ann. § 99-39-9(1), the statements and affidavits furnished failed to support the inmate's claim of ineffective-assistance-of-counsel in the entry of a guilty plea as the inmate failed to show that defense counsel was deficient or how the deficiencies affected the outcome of the case. Holder v. State, 69 So. 3d 54, 2011 Miss. App. LEXIS 356 (Miss. Ct. App. 2011).

Prisoner's motion for post-conviction relief under Miss. Code Ann. § 99-39-9(2) was properly denied. The prisoner claimed that his guilty plea to possession of marijuana with intent to distribute was involuntary due to false promises by drug agents that his time would be cut; however, he stated on the record that no promises were made to him. Cook v. State, 990 So. 2d 788, 2008 Miss. App. LEXIS 560 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

1987 Mississippi Supreme Court Review, Post conviction relief. 57 Miss. L. J. 524, August, 1987.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

(1) The original motion, together with all the files, records, transcripts and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned.

(2) If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the petitioner to be notified.

(3) If the motion is not dismissed under subsection (2) of this section, the judge shall order the state to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate and, in cases in which the petitioner's claim rests on the results of DNA testing of biological evidence, order the testing of the biological evidence.

(4) To facilitate DNA testing of biological evidence, if granted under subsection (3) and if the interests of justice require, the judge may order:

(a) The state to locate and provide the petitioner with any document, note, log or report relating to items of physical evidence collected in connection with the case, or to otherwise assist the petitioner in locating items of biological evidence that the state contends have been lost or destroyed;

(b) The state to take reasonable measures to locate biological evidence that may be in its custody and to prepare an itemized inventory of such evidence;

(c) The state to assist the petitioner in locating evidence that may be in the custody of a public or private hospital, public or private laboratory or other facility;

(d) Both parties to reveal whether any DNA or other biological evidence testing was previously conducted without knowledge of the other party; and

(e) Both parties to produce laboratory reports prepared in connection with DNA testing, as well as the underlying data and the laboratory notes, if evidence had previously been subjected to DNA testing.

(5) If the court orders DNA testing of biological evidence under subsection (3) and evidence for such testing is located in accordance with subsection (4), such testing shall be conducted by a facility mutually agreed upon by the petitioner and the state and approved by the court, or, if the parties cannot agree, the court shall designate the testing facility and provide parties with a reasonable opportunity to be heard on the choice of laboratory issue. The court shall impose reasonable conditions on the testing to protect the parties' interests in the integrity of the evidence and the testing process.

(6) If a state or county forensics laboratory performs DNA testing of biological evidence under this article, the state shall bear the costs of such testing upon a finding of the petitioner's indigence.

(7) If testing is performed at a private laboratory, the court may require either the petitioner or the state to pay for the testing, as the interests of justice require.

(8) If the state or county forensics laboratory does not have the ability or resources to conduct the type of DNA testing to be performed, the state shall bear the costs of testing at a private laboratory that has such capabilities.

(9) The court, in its discretion, may make such other orders as may be appropriate in connection with a granting of testing under subsection (3). These include, but are not limited to, designating:

(a) The type of DNA analysis to be used;

(b) The testing procedures to be followed;

(c) The preservation of some portion of the sample for testing replication;

(d) Additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis;

(e) The collection and DNA testing of elimination samples from third parties; or

(f) Any combination of these.

(10) The court may order additional testing, paid for in accordance with subsections (6) through (8), upon a showing by the petitioner that the comparison of a DNA profile derived from the biological evidence at the scene of the crime for which he was convicted could, when compared to the DNA profiles in the SDIS or CODIS database systems, provide evidence that raises a reasonable probability that the trier of fact would have come to a different outcome by virtue of that comparison demonstrating the possible guilt of a third party or parties.

(11) This section shall not be applicable where an application for leave to proceed is granted by the Supreme Court under Section 99-39-27.

(12) Proceedings under this section shall be subject to the provisions of Section 99-19-42.

HISTORY: Laws, 1984, ch. 378, § 6; Laws, 1995, ch. 566, § 4; Laws, 2009, ch. 339, § 5; Laws, 2015, ch. 452, § 19, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "order" for "or" following "DNA testing of biological evidence." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Cross References — Filing of motion for collateral relief and answer to motion, see § 99-39-9.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

Preservation and accessibility of biological evidence, see § 99-49-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
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1. In general.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 4 (Miss. Ct. App. Jan. 7, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 350 (Miss. 2020).

There was no error in the circuit court's dismissal of defendant's postconviction relief motion and determination that the motion was frivolous, under Miss. Code Ann. § 99-39-11(2), because the circuit court noted that the motion was defendant's third postconviction relief motion and that defendant had filed at least six frivolous lawsuits in state and federal court relating to defendant's conviction. Pickle v. State, 64 So. 3d 1009, 2010 Miss. App. LEXIS 632 (Miss. Ct. App. 2010), cert. denied, 65 So. 3d 310, 2011 Miss. LEXIS 338 (Miss. 2011).

Contention that a trial court failed to consider affidavits purporting to show newly discovered evidence was rejected because the trial court, citing Miss. Code Ann. § 99-39-11(1), stated it had fully examined appellant inmate's postconviction petition, together with all files, records, transcripts and correspondence. Payne v. State, 22 So. 3d 367, 2009 Miss. App. LEXIS 802 (Miss. Ct. App. 2009).

Post-conviction relief was denied because a trial court was not required to advise appellant inmate of his right to appeal after the entry of a guilty plea.

Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Defendant's motion for post-conviction relief, Miss. Code Ann. § 99-39-11(2), was properly denied as defendant's guilty plea was voluntary, Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3), where he swore no one had promised him anything to induce guilty plea; defendant swore counsel had not promised him anything to get him to plead guilty. Bliss v. State, 2 So. 3d 777, 2009 Miss. App. LEXIS 60 (Miss. Ct. App. 2009).

Trial judge unquestionably could consider both the civil file in defendant's post-conviction-relief proceedings and the entire record in the criminal proceedings, including the transcript of the guilty-plea hearing, in determining not only the issue of the merits of defendant's post-conviction-relief petition, but also the issue of whether the petition was frivolous for the purpose of considering sanctions; the trial judge did not abuse his discretion in sanctioning defendant via a forfeiture of sixty days of accrued earned time. Moore v. State, 986 So. 2d 928, 2008 Miss. LEXIS 326 (Miss. 2008).

Trial court did not err in considering the merits of defendant's motion for post-conviction relief where the only evidence offered by defendant in support of his claims of error were the factual assertions found in defendant's petition; consequently, the trial court summarily dismissed defendant's petition, holding that defendant's factual assertions were contradicted by the record. Keith v. State, 999 So. 2d 383, 2008 Miss. App. LEXIS 313 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 52 (Miss. 2009).

In a post-conviction action, defendant was not entitled to a free copy of his guilty plea hearing transcript because: (1) he made no allegation of what a transcript would show except that it was necessary to support the claims made in his motion for post-conviction relief; (2) the trial court determined that defendant's plea petition was sufficient evidence to rule on the merits of his motion for post-conviction collateral relief; and (3) such motion was summarily dismissed by the trial court. Madden v. State, 991 So. 2d 1231, 2008 Miss. App. LEXIS 107 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 507 (Miss. 2008).

Defendant argued, for the first time in his appellate brief, that he received ineffective assistance of counsel at the trial court level, and this issue was procedurally barred as it was not raised in his motion below, Miss. Code Ann. § 99-39-21 (1); the trial court did not err in dismissing this matter pursuant to Miss. Code Ann. § 99-39-11 as a petition for post-conviction relief. Ducote v. State, 970 So. 2d 1309, 2007 Miss. App. LEXIS 831 (Miss. Ct. App. 2007).

Summary dismissal of two petitions for post-conviction relief was appropriate because the state met its burden of showing that defendant was a habitual offender under Miss. Code Ann. § 99-19-81 since one exhibit introduced during sentencing contained pen packs with convictions from Tennessee, Illinois, and the United States government. Harvey v. State, 973 So. 2d 251, 2007 Miss. App. LEXIS 442 (Miss. Ct. App. 2007), cert. denied, 973 So. 2d 244, 2008 Miss. LEXIS 50 (Miss. 2008).

Court is not always required to return a post-conviction relief motion that fails to comply with statutory requirements, and therefore a motion that did not contain a concise statement of the statement or grounds upon which the motion was based, as required by Miss. Code Ann. § 99-39-9(1)(c), and did not state a claim upon which relief could have been granted under Miss. Code Ann. § 99-39-5(1), was properly not returned; the determination of whether to return the motion to defendant was left to the trial court since it did not comply with the statutory requirements, and it could not have survived a dismissal under Miss. Code Ann. § 99-39-11(2). Adams v. State, 962 So. 2d 640, 2007 Miss. App. LEXIS 38 (Miss. Ct. App. 2007).

Trial court did not err in summarily dismissing an inmate's petition as it was time-barred and was a successive petition. Gatlin v. State, 932 So. 2d 67, 2006 Miss. App. LEXIS 479 (Miss. Ct. App. 2006).

Trial court's denial of the inmate's motion for post-conviction relief without a hearing was affirmed, on different grounds, because the inmate's claims were without merit; the inmate waived all non-jurisdictional defects to the indictment when he entered a plea of guilty and the inmate needed to address issues of sentencing credit through the prison administration system. Melton v. State, 930 So. 2d 452, 2006 Miss. App. LEXIS 396 (Miss. Ct. App. 2006).

Both defendant's application for leave to file a motion for post-conviction relief, attacking his rape conviction and sentence, in 2001 (denied by the Mississippi Supreme Court), and his motion for post-conviction relief in 2002 (which raised the issue of his parole eligibility), attacked the same conviction and sentence. Thus, his subsequent motion for post-conviction relief was barred as a successive writ under Miss. Code Ann. § 99-39-27(9); in addition, in its order denying his prior application, the Mississippi Supreme court had stated that defendant's sentence was to be interpreted in accordance with the governing laws at the time his crime was committed, and again, his later motion for post-conviction relief attacked the same sentence and was a successive writ. Bynum v. State, 916 So. 2d 534, 2005 Miss. App. LEXIS 978 (Miss. Ct. App. 2005).

Per Miss. Code Ann. § 47-7-37, the circuit court had the statutory authority to revoke defendant's post-release supervision when he sold cocaine to an agent while on release. There was no error where the circuit court reinstated his five year suspended sentence; further, per the bench warrant upon which defendant was arrested, and the summons setting the revocation hearing, hand delivered to defendant, he had notice of the revocation hearing and he was not denied due process or entitled to post-conviction relief. Rucker v. State, 909 So. 2d 137, 2005 Miss. App. LEXIS 551 (Miss. Ct. App. 2005).

Defendant's argument that his plea was involuntarily and unintelligently entered because he was only 16 years of age when it was entered, his parents were not present at the court proceedings, and he had been misled as to the length of the sentence he would receive if he pled guilty, was rejected. The circuit court had original jurisdiction since defendant was charged with armed robbery, and being properly before the circuit court, his age did not prevent him from entering a valid plea of guilty without parental accompaniment; the record showed defendant responded in the affirmative that he understood there was no minimum sentence, but that the maximum sentence for armed robbery was life in prison, and his motion for post-conviction relief was properly denied. Haynes v. State, 906 So. 2d 762, 2004 Miss. App. LEXIS 1146 (Miss. Ct. App. 2004).

Defendant's "letter of hope" to the trial judge did not constitute a first motion for post-conviction relief, in part, because it was never answered or denied. Nevertheless, the trial court's other grounds for denying defendant's motion were valid, since defendant's request for a reduction in his sentence could have been brought before the trial court at trial or on direct appeal, and therefore he waived the issue; secondly, the trial judge reviewed the record, found that defendant had openly admitted his guilt at the plea proceeding, and found that his motion was meritless as defendant had made the strategic gamble of refusing the more lenient plea agreement that had been offered. Spencer v. State, 907 So. 2d 353, 2004 Miss. App. LEXIS 1077 (Miss. Ct. App. 2004), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 445 (Miss. 2005).

Defendant was properly denied postconviction relief pursuant to Miss. Code Ann. § 99-39-11(2) after defendant's probation was revoked because nowhere in the probation revocation hearing did defendant indicate that defendant did not have proper notice of the hearing or that defendant was not aware of the specific grounds for the revocation of probation. Mathis v. State, 882 So. 2d 798, 2004 Miss. App. LEXIS 934 (Miss. Ct. App. 2004).

Defendant's motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2) was properly denied where defendant's violation of the condition of his suspended sentence occurred within the five-year implied period of probation, Miss. Code Ann. § 47-7-37; defendant understood the simple and clear condition that he was not to violate any laws of any city or state or of the United States. Mc-

Caine v. State, 879 So. 2d 1114, 2004 Miss. App. LEXIS 777 (Miss. Ct. App. 2004).

Trial court was not required to cite case authority or case law in denying defendant's postconviction motion without an evidentiary hearing, and summary dismissal was appropriate where it was clear from defendant's sentence, that as a convicted felon, defendant was in fact eligible to receive post-release supervision and subject to same. Hunt v. State, 874 So. 2d 448, 2004 Miss. App. LEXIS 489 (Miss. Ct. App. 2004).

Court rejected the State's argument that the inmate failed to comply with the requirements of Miss. Code Ann. § 99-39-11(3); (1) first, the court found no requirement of verification in the statute, and (2) while verification of the motion to vacate death sentence was required by Miss. Code Ann. § 99-39-9(3), and absent substantial compliance with Miss. Code Ann. § 99-39-9(4), a prisoner faced possible dismissal of an application, the court found nothing to be gained in this instance in returning the inmate's motion and application filed under Miss. Code Ann. § 99-39-27 for verification. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

Court finds no requirement of verification in Miss. Code Ann. § 99-39-11(3). Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

In considering post-conviction relief motions, trial judges are entitled to rely upon sworn statements made by defendants during their plea qualification hearings. Graves v. State, 872 So. 2d 760, 2004 Miss. App. LEXIS 442 (Miss. Ct. App. 2004).

Defendant's mere assertion of a constitutional right violation was not sufficient to overcome the time bar of Miss. Code Ann. § 99-39-5. There had to at least appear to be some basis for the truth of the claim, or merit to the claim, before the limitation period would be waived and dismissal avoided pursuant to Miss. Code Ann. § 99-39-11(2). Stovall v. State, 873 So. 2d 1056, 2004 Miss. App. LEXIS 454 (Miss. Ct. App. 2004).

In making his findings on an inmate's postconviction relief (PCR) motion, the trial judge, pursuant to Miss. Code Ann. § 99-39-11, properly took judicial notice of his own docket and the prior proceedings had and conducted in both the criminal proceedings forming the basis of the attack via the civil PCR motion, as well as all proceedings had and conducted in the civil matter related to the PCR motion. Gulley v. State, 870 So. 2d 652, 2004 Miss. LEXIS 218 (Miss. 2004).

Trial court properly denied the capital murder defendant's motion for a new trial because there was sufficient evidence to support the underlying charge of attempted rape against the defendant, the State's evidence concerning the underlying charge was not based upon circumstantial evidence, and the defendant's claims that he received ineffective assistance of counsel at his trial were without merit. Powers v. State, 883 So. 2d 20, 2003 Miss. LEXIS 850 (Miss. 2003), cert. denied, 543 U.S. 1155, 125 S. Ct. 1297, 161 L. Ed. 2d 121, 2005 U.S. LEXIS 1584 (U.S. 2005).

Defendant failed to provide proof to support his post-conviction relief claim where the trial judge determined that the petition for post-conviction collateral relief had no merit, after having reviewed the affidavits and the record. Hill v. State, 850 So. 2d 223, 2003 Miss. App. LEXIS 655 (Miss. Ct. App. 2003).

Defendant's claims in a motion for post-conviction relief that he was denied effective assistance of counsel in pleading guilty to two counts of transferring cocaine were insufficiently pled where defendant did not allege how his attorney had coerced him into pleading guilty, misrepresented the facts of his case, had been unprepared for trial, and had conspired with the State to cover up the fact that he was not prepared. Terry v. State, 839 So. 2d 543, 2002 Miss. App. LEXIS 699 (Miss. Ct. App. 2002).

Under subsection (2), dismissal was appropriate where it appeared beyond a doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief; court did not have an obligation to render factual findings. Culbert v. State, 800 So. 2d 546, 2001 Miss. App. LEXIS 467 (Miss. Ct. App. 2001).

There was no error where the court considered the responses made by the State relative to the motions and petitions filed by defendant in three separate orders addressing and denying the request for petition for guilty plea, postconviction collateral relief, and reduction of sentence. Walton v. State, 752 So. 2d 452, 1999 Miss. App. LEXIS 692 (Miss. Ct. App. 1999).

A trial judge was disqualified from ruling on a criminal defendant's postconviction motion where he was the district attorney at the time the criminal information against the defendant was filed, and therefore he should have recused himself initially rather than attempting to recuse himself after his ruling on the postconviction motion was appealed; moreover, the judge erred by participating in selecting his replacement and not following the mandates of § 9-1-105(1). Banana v. State, 638 So. 2d 1329, 1994 Miss. LEXIS 349 (Miss. 1994).

Convict whose numerous appeals, petitions, and motions had been unanimously rejected by Supreme Court, may be denied leave to proceed in forma pauperis on new petition or any further petitions for extraordinary writs. In re McDonald, 489 U.S. 180, 109 S. Ct. 993, 103 L. Ed. 2d 158, 1989 U.S. LEXIS 597 (U.S. 1989).

2. Ineffective assistance of counsel.

Circuit court erred by summarily dismissing defendant's motion for post-conviction relief without an evidentiary hearing because defendant presented sufficient evidence to require an evidentiary hearing—his "best interest" plea was made in reliance on his counsel's erroneous advice that he was not pleading to crimes of violence and that defendant would be eligible for parole, earned time, and trusty time—and it could not be said that defendant could prove no set of facts in support of his claim that would entitle him to relief beyond a doubt. Manuel v. State, — So. 3d —, 2020 Miss. App. LEXIS 592 (Miss. Ct. App. Oct. 20, 2020).

Circuit court properly dismissed petitioner's motions for postconviction relief because petitioner failed to establish that he was denied effective assistance of counsel in entering his guilty plea; petitioner asserted in his plea petition and in open court that he understood the ramifications of pleading guilty, and he acknowledged that his guilty plea included the enhancement and its effect on his sentence. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

Defendant's post-conviction relief motion claiming counsel's ineffective assistance when pleading guilty was properly summarily dismissed because (1) nothing showed defendant was unaware of the charge defendant pled guilty to, and (2) defendant admitted the State presented a factual basis for the plea. Thomas v. State, 159 So. 3d 1212, 2015 Miss. App. LEXIS 145 (Miss. Ct. App. 2015).

Trial court did not err in dismissing appellant's motion for post-conviction relief because appellant did not receive ineffective assistance of counsel; appellant indicated his satisfaction with the advice and services provided by his trial counsel, and appellant admitted under oath that he was guilty of the crime to which he pleaded guilty. Byers v. State, 107 So. 3d 1071, 2013 Miss. App. LEXIS 65 (Miss. Ct. App. 2013).

Prisoner's motion for post-conviction relief on a claim of ineffective assistance of counsel was properly dismissed because the prisoner offered nothing in support of the assertion that trial counsel failed to investigate the victim's medical history. Henderson v. State, 89 So. 3d 598, 2011 Miss. App. LEXIS 351 (Miss. Ct. App. 2011), cert. denied, 95 So. 3d 654, 2012 Miss. LEXIS 283 (Miss. 2012).

Circuit court did not err by dismissing the prisoner's postconviction relief motion because he did not receive ineffective assistance of counsel; the prisoner did not support his claim with an affidavit other than his own and, during the guilty-plea hearing, he told the circuit court that he was "completely satisfied" with the performance of his court-appointed attorney. Evans v. State, 61 So. 3d 922, 2011 Miss. App. LEXIS 35 (Miss. Ct. App. 2011).

In a case in which an inmate appealed the trial court's summary dismissal of his post-conviction relief motion, since he was properly sentenced as a habitual offender, his claim was moot that his counsel was ineffective for allowing him to plead guilty as a habitual offender without proof or evidence of his prior convictions. Joiner v. State, 32 So. 3d 542, 2010 Miss. App. LEXIS 56 (Miss. Ct. App. 2010).

Trial court did not err in denying defendant's motion for post-conviction collateral relief because defense counsel was not deficient for not informing defendant that he could be sentenced as an habitual offender, that his sentence could have been illegal, and that he would not be granted post-release supervision for part of his sentence; defense counsel and the trial court both thoroughly led defendant through the plea process to ensure that he understood his plea did not guarantee him either post-release supervision or a particular sentence. Burrough v. State, 9 So. 3d 368, 2009 Miss. LEXIS 143 (Miss. 2009).

Trial court did not err in denying defendant's motion for post-conviction collateral relief because defense counsel was not deficient for failing to object when the trial court enhanced his sentence without giving him the opportunity to withdraw his guilty plea; defense counsel's failure to object if any, was one that originated subsequent to the trial court's acceptance of a valid guilty plea, after it was determined to be voluntarily and intelligently given, based on an acknowledged understanding by the defendant that any "consequences" allowed by law could result. Burrough v. State, 9 So. 3d 368, 2009 Miss. LEXIS 143 (Miss. 2009).

Post-conviction relief was denied because appellant inmate failed to show that he received ineffective assistance of counsel based on an alleged conflict of interest because he did not show that defense counsel actively represented conflicting interests and that an actual conflict of interest adversely affected counsel's performance. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Post-conviction relief was denied because appellant inmate failed to show that he received ineffective assistance of counsel based on an alleged failure to conduct an investigation because the inmate did not give specific information satisfying the second prong of the test under Strickland v. Washington, 466 U.S. 668 (1984), or show that the failure to investigate affected the decision to enter his guilty pleas. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Post-conviction relief was denied because appellant inmate failed to show that he received ineffective assistance of counsel due to a failure to file a speedy trial motion under Miss. Code Ann. § 99-17-1; there was no violation of this right because there was only a six-month delay between an arraignment and the inmate's guilty pleas, and this was mainly due to continuances filed on behalf of the inmate. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Post-conviction relief was denied because appellant inmate did not show that he received ineffective assistance of counsel due to a failure to file a constitutional speedy trial motion because there was no showing that it would have been successful; even though the reason for an 8-month delay weighed in the inmate's favor, the inmate did not show that he was prejudiced, other than due to his pretrial incarceration. Moreover, there was no evidence that the inmate had asserted the speedy trial right. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Where appellant pleaded guilty to two counts of sexual battery, there was a factual basis for his plea because appellant told the trial court that he had committed the crimes; appellant failed to prove that his trial counsel was ineffective for urging him to plead guilty to defective indictments in order to obtain a lighter sentence. The trial court properly dismissed his petition for post-conviction relief under Miss. Code Ann. § 99-39-11(2). Kimble v. State, 983 So. 2d 1069, 2008 Miss. App. LEXIS 116 (Miss. Ct. App. 2008).

Dismissal of a petition for post-conviction relief was reversed and remanded for an evidentiary hearing because defendant made a prima facie showing that his attorney was deficient in recommending a plea to a weapons charge since there was no probable cause to stop a car where one taillight was working under Miss. Code

Ann. § 63-7-13; however, there was no ineffective assistance of counsel shown based on a failure to explain an Alford plea or the failure to investigate. Moore v. State, 986 So. 2d 959, 2007 Miss. App. LEXIS 242 (Miss. Ct. App. 2007), rev'd, 986 So. 2d 928, 2008 Miss. LEXIS 326 (Miss. 2008).

Defendant's motion for post-conviction relief, filed after he pled guilty to two counts of murder was properly dismissed without a hearing pursuant to Miss. Code Ann. § 99-39-11(2) where counsel's advice that a trial could result in a guilty verdict and the death penalty did not support an argument of ineffectiveness; counsel had a duty to inform defendant of the possible outcomes of conviction. Booker v. State, 954 So. 2d 448, 2006 Miss. App. LEXIS 864 (Miss. Ct. App. 2006).

Trial court did not err under Miss. Code Ann. § 99-39-11(2) in denying petitioner an evidentiary hearing on his post-conviction petition because there was no evidence in the record other than his bald assertions that counsel performed inadequately; he did not demonstrate that his counsel failed to perform at the constitutional minimum. Knight v. State, 2006 Miss. App. LEXIS 808 (Miss. Ct. App. Oct. 31, 2006).

Where defendant was charged with aggravated assault and possession of a firearm by a felon, his attorney told him that he would receive life without parole if he went to trial; defendant then entered a plea of guilty to aggravated assault. Because his attorney's advice was correct, defendant was afforded effective assistance of counsel; he was not entitled to post-conviction relief. Brewer v. State, 920 So. 2d 546, 2006 Miss. App. LEXIS 79 (Miss. Ct. App. 2006).

Appellant's guilty plea to possession of a controlled substance with intent to distribute effectively waived all of the allegations in his motion for post-conviction relief; and he failed to offer proof to support his ineffective assistance of counsel claim. The post-conviction court properly denied his motion without a hearing. Buckhalter v. State, 912 So. 2d 159, 2005 Miss. App. LEXIS 435 (Miss. Ct. App. 2005).

Inmate's request for post-conviction relief was denied because there was no showing of ineffective assistance of counsel where the issues were not pled with specificity. Kelley v. State, 913 So. 2d 379, 2005 Miss. App. LEXIS 277 (Miss. Ct. App. 2005).

Prisoner's allegation of ineffective assistance of counsel lacked the specificity and detail required to establish a prima facie showing under Miss. Code Ann. §§ 99-39-11(2) and 99-39-9(1)(c); although the prisoner alleged that his counsel failed to call any witnesses and failed to subject the prosecution's case to meaningful adversarial testing, the prisoner did not name any witnesses and did not specify any testimony which might have been offered in his favor. Bishop v. State, 882 So. 2d 135, 2004 Miss. LEXIS 773 (Miss. 2004), cert. denied, 543 U.S. 1189, 125 S. Ct. 1401, 161 L. Ed. 2d 194, 2005 U.S. LEXIS 2123 (U.S. 2005).

Denial of the inmate's petition for post-conviction relief was proper where he offered no proof that his defense counsel had been ineffective and failed to present his claims with any specificity as required by Miss. Code Ann. § 99-39-11(2). Puckett v. State, 879 So. 2d 920, 2004 Miss. LEXIS 592 (Miss. 2004), cert. denied, 544 U.S. 924, 125 S. Ct. 1638, 161 L. Ed. 2d 483, 2005 U.S. LEXIS 2506 (U.S. 2005).

Defendant was not entitled to a free transcript in a post-conviction relief setting because his post-conviction motion could not withstand summary dismissal under Miss. Code Ann. § 99-39-11(2); defendant did not demonstrate ineffective assistance of counsel where he did not allege with any degree of specificity what constituted the mitigating evidence or the manner in which his counsel coerced him, and such naked allegations did not supply the "specificity and detail" required to establish a prima facie showing. McCray v. State, 869 So. 2d 442, 2004 Miss. App. LEXIS 247 (Miss. Ct. App. 2004).

Defendant failed to meet his burden of proof regarding the allegation of ineffective assistance of counsel where his assertion that his attorney put up "no defense" during closing arguments other than to say "my client says he's innocent" was completely false; counsel said more in closing argument than defendant asserted and defendant did not show that counsel's performance was deficient. Armstead v. State, 869 So. 2d 1052, 2004 Miss. App. LEXIS 68 (Miss. Ct. App. 2004).

No support existed for the defendant's post-conviction claim that he was denied the effective assistance of counsel due to his counsel's failure to fully investigate the facts of the defendant's case and explore the possibility that various purported witnesses could have provided evidence tending to absolve the defendant from guilt; the defendant failed to show that any witnesses who could exonerate him existed and that the unavailability of potentially favorable witnesses was due to the defense counsel's failure to adequately pursue this avenue of defense. Davidson v. State, 850 So. 2d 158, 2003 Miss. App. LEXIS 493 (Miss. Ct. App. 2003).

Defendant failed to meet his statutory burden of proof required to establish a prima facie showing, where defendant did not show that counsel's performance was deficient and that he was prejudiced by counsel's mistakes. Hargett v. State, 864 So. 2d 283, 2003 Miss. App. LEXIS 665 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 44 (Miss. 2004).

Denial of defendant's motion for post-conviction relief was proper and defendant's claim that his attorney was ineffective in that he lied to the trial court, attempted to induce perjured testimony, and gave up on the adversarial process was rejected; defendant failed to support his assertions with any factual basis or supporting affidavits, and his assertions lacked the specificity and detail required to establish a prima facie showing under Miss. Code Ann. § 99-39-11(2), and he failed to show that but for his counsel's actions, the results of the trial court would have been different. Hamlin v. State, 853 So. 2d 841, 2003 Miss. App. LEXIS 728 (Miss. Ct. App. 2003).

Trial court did not abuse its discretion in dismissing defendant's motion for post-conviction relief from conviction of capital murder and conspiracy without holding an evidentiary hearing as defendant's motion did not present any facts showing that defendant had received ineffective assistance of counsel in entering guilty pleas. Porter v. State, 824 So. 2d 650, 2002 Miss. App. LEXIS 459 (Miss. Ct. App. 2002).

Trial court did not err in dismissing defendant's motion for post-conviction relief based on ineffective assistance of counsel without an evidentiary hearing as defendant's unsupported allegation that defendant's attorney told defendant that defendant would be sentenced to six years if defendant pleaded guilty to robbery instead of the ten years defendant received was clearly rebutted by the record of the guilty plea hearing. Jones v. State, 795 So. 2d 589, 2001 Miss. App. LEXIS 355 (Miss. Ct. App. 2001).

Evidence was insufficient to require the court to hold a hearing to determine the petitioner's claim of ineffective assistance of counsel and, therefore, the summary denial of the petition for post-conviction relief was proper. Bell v. State, 754 So. 2d 492, 1999 Miss. App. LEXIS 572 (Miss. Ct. App. 1999).

Allegation by post-conviction petitioner, who had pleaded guilty to charge of capital murder, that he had received ineffective assistance of counsel on basis that his guilty plea was induced by misrepresentations of his attorney was rebutted by transcript of plea hearing and could be summarily denied without hearing; record indicated that petitioner had remained silent both when given opportunity to inform court of terms of alleged "real plea bargain," and also when accomplice received shorter sentence. Simpson v. State, 678 So. 2d 712, 1996 Miss. LEXIS 413 (Miss. 1996).

Prima facie claim must be stated by defendant in post-conviction petition to lower court in order to obtain evidentiary hearing on merits of ineffective assistance of counsel issue. Robertson v. State, 669 So. 2d 11, 1996 Miss. LEXIS 68 (Miss. 1996).

Petitioner's post-conviction claim that he received ineffective assistance of counsel when pleading guilty to felony jail escape was deficient and properly dismissed without evidentiary hearing, where petitioner's affidavit did not track statutory requirements for supporting affidavit and was sole evidentiary support for claim, he presented no other evidence that he escaped from work detail instead of jail, and he did not state how his attorney's performance, in relating state's offer to drop aggravated assault charge in return for guilty plea, was deficient. Robertson v. State, 669 So. 2d 11, 1996 Miss. LEXIS 68 (Miss. 1996).

A circuit court properly summarily dismissed a defendant's post -conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel, where a transcript of the plea hearing showed that the trial court fully informed the defendant of the maximum sentence for the crime charged in the indictment and the effect of the habitual criminal statute if he subsequently committed another crime of violence and that the defendant acknowledged to the court that no one had threatened, abused or mistreated him in any way or promised him anything to cause him to wish to plead guilty, and the defendant did not contend that he lied to the court because of misrepresentations by his attorney. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

A defendant's complaints of ineffective assistance of counsel in his post-conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel were insufficient as a matter of law where the defendant failed to allege that the asserted errors of his attorney proximately resulted in his guilty plea and that, but for these errors, he would not have entered the plea. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

3. Involuntariness of guilty plea.

Although appellant contended that his attorney's incorrect parole-eligibility advice rendered his guilty pleas involuntary and amounted to ineffective assistance of counsel, appellant's unsupported allegations did not warrant an evidentiary hearing on the issue. Moore v. State, 248 So. 3d 845, 2017 Miss. App. LEXIS 671 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 311 (Miss. 2018).

Circuit court properly dismissed petitioner's motions for postconviction relief because his guilty plea was voluntarily and knowingly given; the circuit court clearly spelled out the maximum and minimum sentences petitioner faced if he chose to plead guilty, and during the plea colloquy, petitioner agreed that he could not rely on any representations that were made to him as they pertained to his sentence. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

Trial court did not err in dismissing defendant's motion for post-conviction relief because the trial court was made aware of his use of prescription drugs and did not find that his decision to plead guilty was impeded, defendant did not inform the trial court that the drugs affected his mental state or that he had doubts about pleading guilty, and he offered only his own affidavit in support of his claim that trial counsel was ineffective. Fortenberry v. State, 151 So. 3d 222, 2014 Miss. App. LEXIS 625 (Miss. Ct. App. 2014).

Although a prisoner argued he unwillingly pleaded guilty to manslaughter, a court properly dismissed the prisoner's motion for post-conviction relief because according to the plea colloquy, the trial court thoroughly advised the prisoner of his rights, the nature and elements of the charges, as well as the consequences of the guilty plea; the colloquy also showed the prisoner expressly indicated to the trial court's satisfaction that he understood each of the trial court's advisements, and he wished to waive the rights ordinarily due a criminal defendant. Henderson v. State, 89 So. 3d 598, 2011 Miss. App. LEXIS 351 (Miss. Ct. App. 2011), cert. denied, 95 So. 3d 654, 2012 Miss. LEXIS 283 (Miss. 2012).

Defendant's guilty plea to arson was not involuntary because the trial court ensured that defendant's attorney had explained the elements of the offense and that defendant understood the nature of the charges; at his plea hearing, defendant swore that he was pleading guilty with a full understanding of the matters set forth in the indictment, and he also acknowledged his lawyer had advised him of what the State was required to prove at trial to a jury beyond a reasonable doubt. Hill v. State, 60 So. 3d 824, 2011 Miss. App. LEXIS 260 (Miss. Ct. App. 2011).

Denial of post-conviction relief motion was proper as defendant's guilty plea was voluntary and knowing despite the fact that defendant claimed that he was under the influence of medication at the time that he entered his plea, in that defendant's plea petition stated that he was not under influence of intoxicants or suffering from mental disease when he signed it. As defendant admitted his guilt, the circuit court did not abuse its discretion under Miss. Code Ann. § 99-39-11 (Supp. 2010) in denying defendant an evidentiary hearing. Chambers v. State, 59 So. 3d 640, 2011 Miss. App. LEXIS 212 (Miss. Ct. App. 2011).

Because the record of a plea hearing clearly belied a prisoner's contention that he was promised leniency if he confessed to possession of marijuana with intent to distribute, the prisoner was not entitled to an evidentiary hearing, pursuant to Miss. Code Ann. § 99-39-11(2). Cook v. State, 990 So. 2d 788, 2008 Miss. App. LEXIS 560 (Miss. Ct. App. 2008).

Defendant was not entitled to a hearing on his motion for post-conviction relief on the ground that his attorney coerced his guilty plea by misinforming him as to the possible sentence he faced, because the record was clear that defendant was informed as to the possible sentence and the consequences of his plea. Thomas v. State, 10 So. 3d 514, 2008 Miss. App. LEXIS 553 (Miss. Ct. App. 2008).

Post-conviction motion should not have been summarily dismissed under Miss. Code Ann. § 99-39-11 where defendant entered a guilty plea to kidnapping and received 20 years in prison because, although the plea was facially correct, the evidence presented by defendant indicated that his attorney misrepresented the sentence as probation, and this was a proper attack on the voluntariness of the plea and formed the basis for an ineffective assistance of counsel claim; however, ineffective assistance of counsel was not shown regarding the attorney's representation that a victim was unable to testify at the plea hearing on the issue of guilt /innocence or based on an incomplete transcript since no prejudice was shown. Mitchener v. State, 964 So. 2d 1188, 2007 Miss. App. LEXIS 596 (Miss. Ct. App. 2007).

Post-conviction relief was denied without an evidentiary hearing where defendant pled guilty to a drug charge because the trial court informed him of the consequences of the plea, despite an attorney's prediction that he would receive less time; moreover, a 34-year sentence was not disproportionate since it was within the limits of Miss. Code Ann. § 41-29-313 and Miss. Code Ann. § 41-29-147. Bridges v. State, 973 So. 2d 246, 2007 Miss. App. LEXIS 240 (Miss. Ct. App. 2007).

Trial court properly dismissed petitioner's postconviction motion without an evidentiary hearing, pursuant to Miss. Code Ann. § 99-39-11(2), where the trial court had complied with Miss. Unif. Cir. & Cty. R. 8.04 and the constitutional requirements for ascertaining that her guilty plea to sexual battery was voluntarily and intelligently entered. Staggs v. State, 960 So. 2d 563, 2007 Miss. App. LEXIS 9 (Miss. Ct. App.), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 413 (Miss. 2007).

Appellate court affirmed the summary dismissal of an inmate's motion for postconviction relief under Miss. Code Ann. § 99-39-11(2) because a claim of new evidence was not relevant when an inmate had pled guilty, and inmate could not establish that his plea was not voluntary. Majors v. State, 946 So. 2d 369, 2006 Miss. App. LEXIS 199 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 50 (Miss. 2007).

Although appellant alleged that his guilty plea to armed robbery and aggravated assault was not voluntarily and knowingly entered because he was unable to read, the postconviction court did not err in dismissing his motion for postconviction relief, as appellant had represented to the trial court at the plea hearing that he could read and write. Gross v. State, 954 So. 2d 438, 2006 Miss. App. LEXIS 804 (Miss. Ct. App. 2006).

Inmate's petition for post-conviction relief was denied under Miss. Code Ann. 99-39-11 because a transcript of a plea hearing failed to establish that counsel induced him into pleading guilty; there was a strong presumption of the validity of the statements made by the inmate during the actual plea hearing, and as such a claim of ineffective assistance of counsel failed. Hull v. State, 933 So. 2d 315, 2006 Miss. App. LEXIS 499 (Miss. Ct. App. 2006).

Denial of the inmate's motion for post-conviction relief was appropriate because his sworn signature on his plea agreement and testimony during his plea hearing showed that his plea of guilty was voluntary and intelligently given, and as such, the court was unable to say that the circuit court's holding was clearly erroneous. Ross v. State, 936 So. 2d 983, 2006 Miss. App. LEXIS 612 (Miss. Ct. App. 2006).

Circuit properly dismissed defendant's motion for post-conviction relief without a hearing where defendant's sworn statements at her plea hearing showed that her plea was voluntary and knowing. Graves v. State, 872 So. 2d 760, 2004 Miss. App. LEXIS 442 (Miss. Ct. App. 2004).

Since the record did not include a plea transcript or a plea petition and there was no showing that a trial court had reviewed this evidence to determine whether or not a plea to drug charges had been voluntarily given, the case was reversed for further proceedings. White v. State, 867 So. 2d 1047, 2004 Miss. App. LEXIS 5 (Miss. Ct. App. 2004).

Defendant's argument that counsel coerced defendant into pleading guilty was directly contradicted by the record, which showed that the trial judge asked defendant specifically about whether defendant had been coerced or threatened into pleading guilty, and defendant responded in the negative; thus defendant's plea was voluntary, there was no showing that counsel was ineffective, and defendant's petition for post-conviction relief was properly denied. Roby v. State, 861 So. 2d 368, 2003 Miss. App. LEXIS 1189 (Miss. Ct. App. 2003).

Inmate's motion, alleging an act of duplicity on the part of his defense counsel, was supported by nothing beyond the inmate's own assertion, which was overwhelmingly belied by his own testimony under oath at the plea hearing that his plea was voluntarily made; thus, the trial court acted properly by denying post-conviction relief on the conclusion that the inmate's allegations under oath contradicted his earlier sworn testimony and were, therefore, merely a sham. Whitfield v. State, 845 So. 2d 762, 2003 Miss. App. LEXIS 424 (Miss. Ct. App. 2003).

Defendant's plea petition was not an oral statement in open court but a sworn document and similarly to statements in open court, it could be used to discredit defendant's post-plea allegations that defendant's guilty plea was involuntary; thus, in defendant's post-conviction action, the trial judge properly determined that summary dismissal was appropriate and no transcript would be ordered, where the plea petition fully enumerated the rights defendant was waiving and informed defendant of the maximum possible sentence. Ward v. State, 879 So. 2d 452, 2003 Miss. App. LEXIS 1200 (Miss. Ct. App. 2003), cert. denied, 882 So. 2d 234, 2004 Miss. LEXIS 1009 (Miss. 2004).

The trial court erred in granting a motion for post-conviction relief where (1) no evidence other than the defendant's own affidavit supported his allegation that he was promised a sentence of no more than seven years in exchange for his guilty plea, and (2) in his petition to plead guilty, the defendant stated that he fully understood the charges against him, that he understood his rights under the Constitution, that he would waive those rights by pleading guilty, and that he understood that the trial judge had sole discretion in sentencing him if he pled guilty. State v. Santiago, 773 So. 2d 921, 2000 Miss. LEXIS 212 (Miss. 2000).

Defendant was not prejudiced in post-conviction proceeding when trial court refused to grant his request for transcript of hearing in which he pleaded guilty to capital murder, where record was amended to include transcript of plea proceeding, and affidavit in which defendant challenged voluntariness of his plea was inconsistent with transcript. Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

A trial court's failure to inform a defendant of the mandatory minimum sentence for the crime charged did not render the defendant's guilty plea involuntary where no misrepresentation as to the mandatory minimum sentence was made to the defendant, he did not expect to receive the mandatory minimum sentence, he did not claim that there was a misrepresentation of the sentence which he was to receive, he was fully apprised and understood the consequences of the sentence the State intended to recommend, and he did not allege that the failure to be informed of the minimum sentence induced him to enter his guilty plea. Smith v. State, 636 So. 2d 1220, 1994 Miss. LEXIS 54 (Miss. 1994).

A defendant's claim that he blindly entered a plea of guilty because his attorney told him that his mother advised him to do so was not sufficient to render his plea involuntary. Smith v. State, 636 So. 2d 1220, 1994 Miss. LEXIS 54 (Miss. 1994).

A trial court's failure to inform a defendant, who pled guilty to possession of cocaine with intent to distribute, that a $1,000.00 fine was the minimum penalty for the crime was harmless error where the record contained the defendant's written waiver of indictment, his petition to enter a plea of guilty, and a 12-page transcript of the circuit judge's interrogation of the defendant before accepting the plea. Eley v. State, 631 So. 2d 787, 1994 Miss. LEXIS 79 (Miss. 1994).

A circuit court properly summarily dismissed a defendant's post -conviction relief motion alleging that his guilty plea was involuntarily made as a result of ineffective assistance of counsel, where a transcript of the plea hearing showed that the trial court fully informed the defendant of the maximum sentence for the crime charged in the indictment and the effect of the habitual criminal statute if he subsequently committed another crime of violence and that the defendant acknowledged to the court that no one had threatened, abused or mistreated him in any way or promised him anything to cause him to wish to plead guilty, and the defendant did not contend that he lied to the court because of misrepresentations by his attorney. Garlotte v. State, 597 So. 2d 641, 1992 Miss. LEXIS 161 (Miss. 1992).

A circuit court properly summarily denied a defendant's post-conviction relief motion to vacate his murder conviction on the ground that his guilty plea was not made knowingly and intelligently and was devoid of a factual basis, even though the defendant did not admit outright that the killing of the victim was malicious, where the defendant struck the victim twice with the butt of a gun during an altercation and continued to knock the victim down each time he pulled himself up, and there was nothing in the record to suggest that the defendant was offered any hope of reward for entering his plea of guilty or that he was coerced, threatened or intimidated into making it, but, to the contrary, the circuit court interrogated the defendant thoroughly and carefully explained to him the full gamut of constitutional protections available to him as well as the ramifications of entering a guilty plea. Lott v. State, 597 So. 2d 627, 1992 Miss. LEXIS 149 (Miss. 1992).

A defendant's complaint sufficiently stated a claim for post-conviction relief on the ground that his guilty plea was involuntary, and therefore his complaint should not have been dismissed on its face, where the defendant alleged that his attorney told him that he would receive a sentence of less than 12 years if he entered a guilty plea, and the defendant entered a plea of guilty whereupon he was sentenced to 16 years' imprisonment. Although a mere expectation or hope of a lesser sentence than might be meted out after conviction upon a trial by jury will generally not be sufficient to entitle a defendant to relief in such a case, the assurance of a 12-year cap on his sentence constituted a "firm representation" rather than a "mere expectation" of such a lesser sentence, and therefore provided a basis for relief. Myers v. State, 583 So. 2d 174, 1991 Miss. LEXIS 388 (Miss. 1991).

4. Defendant's mistaken belief.

Where an inmate pled guilty to murder, but argued that it was a "crime of passion," it was not error to deny the inmate's motion for the production of the transcript of the partial trial because the inmate improperly equated a "crime of passion" with a killing in the heat of passion, and there was nothing to suggest that the victim did anything in the moments prior to death to provoke or arouse sufficient passion to cause the inmate to kill the victim in a moment of rage. Lawrence v. State, 970 So. 2d 1291, 2007 Miss. App. LEXIS 366 (Miss. Ct. App. 2007).

A circuit court's summary denial and dismissal of a defendant's motion for post-conviction collateral relief was not error where the defendant asserted that he entered a guilty plea under the advice and belief that the maximum sentence which could be imposed under the indictment was 20 years so that his 30 year sentence was improper, the maximum sentence which could be imposed under the indictment, which charged the defendant with possession of more than one kilogram of marijuana with intent to distribute and recidivism, was 30 years without parole or probation, and the transcript of the plea colloquy between the trial court judge and the defendant belied the defendant's claim of a 20-year plea bargain. Turner v. State, 590 So. 2d 871, 1991 Miss. LEXIS 875 (Miss. 1991).

5. Defective indictment.

Trial court did not err in dismissing appellant's motion for postconviction relief because the indictment was not defective for failing to allege the essential elements of sexual battery of a child under fourteen years old when the charged offense in the indictment tracked the language set forth in the statute; the element of consent is not an essential element of the charged crime. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Trial court did not err in dismissing appellant's motion for post-conviction relief because his indictment was legally sufficient; by setting forth the statutory section charged, Miss. Code Ann. § 97-3-109(1), which was the applicable statute for drive-by shooting, the indictment gave appellant sufficient notice, meeting the requirements of Miss. Unif. Cir. & Cty. R. 7.06 and due process. Byers v. State, 107 So. 3d 1071, 2013 Miss. App. LEXIS 65 (Miss. Ct. App. 2013).

In a case in which an inmate appealed the summary dismissal of his motion for post-conviction relief, he argued unsuccessfully that the indictment charging him with armed robbery was defective because his indictment did not properly conclude with the words "against the peace and dignity of the State," thereby violating Miss. Const. Art. 6, § 169. Since he had entered a valid plea of guilty to the crime of strong armed robbery, a lesser offense to the crime of armed robbery charged in the indictment, he could not now challenge the validity of the indictment for the alleged defect he claims existed therein. Joiner v. State, 32 So. 3d 542, 2010 Miss. App. LEXIS 56 (Miss. Ct. App. 2010).

Trial court did not err in summarily dismissing defendant's motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2) because defendant's burglary conviction was not unconstitutional; defendant, represented by counsel, had executed a sworn waiver of indictment to a charge of burglary brought by criminal information. Edwards v. State, 995 So. 2d 824, 2008 Miss. App. LEXIS 474 (Miss. Ct. App. 2008).

Inmate's petition for post-conviction was denied because he waived the right to challenge on the basis of speedy trial or a defect in the indictment under Miss. Const. Art. VI, § 169 when he entered a guilty plea. Burch v. State, 929 So. 2d 394, 2006 Miss. App. LEXIS 375 (Miss. Ct. App. 2006).

Defendant who entered a plea of guilty to aggravated assault was not entitled to a hearing on his petition for post-conviction relief. Indictment alleging that defendant attempted to cause bodily injury to the victim by firing a gun at her, without any legal justification, was sufficient to charge defendant with the crime of aggravated assault. Brewer v. State, 920 So. 2d 546, 2006 Miss. App. LEXIS 79 (Miss. Ct. App. 2006).

Where, as part of a guilty plea, defendant admitted committing the essential elements of the crime, defendant waived any challenge to indictment as defective for stating the wrong date on which the offense was committed. Shinall v. State, 832 So. 2d 1291, 2002 Miss. App. LEXIS 859 (Miss. Ct. App. 2002).

Allegations that indictments were defective because the record did not identify them as the indictments returned by the appropriate grand jury and because they were not accompanied by the affidavit of the grand jury foreman, involved non-jurisdictional defects which were waived when the defendant entered a voluntary guilty plea and failed to timely assert his claims in the lower court. Moreover, it was not clear that the defendant would have been entitled to relief even if the claims had been timely asserted because the indictments were signed by the foreman of the grand jury and marked "filed" by the county circuit clerk. Brooks v. State, 573 So. 2d 1350, 1990 Miss. LEXIS 776 (Miss. 1990).

6. Evidentiary hearing.

Defendant was not entitled to an evidentiary hearing on defendant's post-conviction relief motion because defendant presented nothing supporting defendant's claims that defendant's guilty plea was involuntary or defendant's counsel was ineffective. Crawford v. State, 287 So. 3d 314, 2019 Miss. App. LEXIS 577 (Miss. Ct. App. 2019).

In the light of the circuit court's detailed order denying appellant's post-conviction relief (PCR) motion, the extensive record reviewed by the circuit court, and the fact that the same circuit court judge who denied appellant's PCR motion also conducted his revocation hearing, there was error in the circuit court's decision to rule upon the PCR motion without an evidentiary hearing; the circuit court's detailed order demonstrated its careful review of the record. Claverie v. State, 261 So. 3d 1120, 2018 Miss. App. LEXIS 122 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 36 (Miss. 2019).

Circuit court's dismissal of defendant's post-conviction relief motion, without first conducting an evidentiary hearing, was consistent with the evidence and testimony presented in the record as defendant failed to provide evidentiary support for defendant's claims and defendant's claims were without merit. Moore v. State, 250 So. 3d 521, 2018 Miss. App. LEXIS 317 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 99 (Miss. 2019).

Circuit court's dismissal of defendant's motion for postconviction relief was not clearly erroneous because defendant violated defendant's post-release supervision agreement while living in Nevada by possessing sexually explicit material depicting naked children that was deemed inappropriate for defendant to possess, particularly in light of defendant's underlying offenses. Despite the admission by defendant that was contained in a waiver that defendant signed, the circuit court made an independent finding that the images were inappropriate. Roark v. State, 212 So. 3d 95, 2016 Miss. App. LEXIS 672 (Miss. Ct. App. 2016).

Trial court did not err in summarily dismissing defendant's postconviction relief motions because defendant failed to demonstrate a claim that was procedurally alive which substantially showed the denial of a state or federal right. Pinkney v. State, 192 So. 3d 337, 2015 Miss. App. LEXIS 614 (Miss. Ct. App. 2015).

Circuit court did not err by dismissing defendant's postconviction-relief motion without an evidentiary hearing because each of defendant's arguments was manifestly without merit as he was informed that his sentence could be served day-for-day if his probation was revoked; and the circuit court did not err in concluding that defendant did not pay any of his fines and fees. Smith v. State, 196 So. 3d 986, 2015 Miss. App. LEXIS 581 (Miss. Ct. App. 2015).

Circuit court did not err by summarily dismissing without an evidentiary hearing all of defendant's postconviction relief issues because the issues were without merit. However, the one issue of whether defendant's guilty plea was involuntary had to be reversed and remanded for an evidentiary hearing limited to that single issue. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

Nothing prevented a trial court, pursuant to Miss. Code Ann. § 99-39-19, from finding that an evidentiary hearing was not warranted and summarily dismissing a probationer's post-conviction relief motion, even though the court had ordered the State of Mississippi to file an answer, under Miss. Code Ann. § 99-39-11(3), to the probationer's motion. Hall v. State, 189 So. 3d 631, 2014 Miss. App. LEXIS 41 (Miss. Ct. App. 2014).

Circuit court did not err in failing to grant an evidentiary hearing before dismissing appellant's post-conviction relief motion because appellant's Alford plea was valid, his claims regarding the voluntariness of his confession were waived when he entered his Alford plea, and he failed to make a sufficient showing that his counsel was ineffective or that his sentence was disproportionate. Argol v. State, 155 So. 3d 848, 2013 Miss. App. LEXIS 143 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 59 (Miss. 2014), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 60 (Miss. 2014).

Pursuant to Miss. Code Ann. § 99-39-9(1)(e), 99-39-11(2), defendant's motion for postconviction relief was properly dismissed without an evidentiary hearing because an alleged confession by defendant's brother was not sworn under oath, and defendant did not show why the brother could not have testified during defendant's trial, which meant that the confession was not newly discovered. Johnson v. State, 110 So. 3d 353, 2013 Miss. App. LEXIS 132 (Miss. Ct. App. 2013).

Inmate's post-conviction relief motion was properly denied without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) as it was plain from the face of the motion that it was barred and there was no need for an evidentiary hearing. Sims v. State, 134 So. 3d 317, 2013 Miss. App. LEXIS 102 (Miss. Ct. App. 2013), aff'd, 134 So. 3d 300, 2014 Miss. LEXIS 161 (Miss. 2014).

Circuit court's denial of defendant's post-conviction relief motion was consistent with the evidence and testimony presented in the record. Higginbotham v. State, 122 So. 3d 1205, 2013 Miss. App. LEXIS 78 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 529 (Miss. 2013).

Trial judge was authorized to dismiss an inmate's motion for postconviction relief without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) as after reviewing the Miss. Code Ann. § 99-39-9(1) materials, the trial judge found that the inmate's argument for a hearing was largely an attempt to reargue the inmate's ineffective assistance of counsel and involuntary guilty plea issues that had been rejected. Holder v. State, 69 So. 3d 54, 2011 Miss. App. LEXIS 356 (Miss. Ct. App. 2011).

Dismissal of appellant's, an inmate's, petition for postconviction relief was appropriate under Miss. Code Ann. § 99-39-11(2) because an evidentiary hearing was not required. The circuit court entered a detailed order in which each of the inmate's claims were fully addressed; it was clear from the motion that the inmate was not entitled to the relief requested and therefore, the circuit court properly dismissed the motion. Dunlap v. State, 70 So. 3d 1140, 2011 Miss. App. LEXIS 221 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 483 (Miss. 2011).

Based on the evidence and the testimony presented, the circuit court did not err in denying appellant an evidentiary hearing on his motion for post-conviction relief. Spencer v. State, 994 So. 2d 878, 2008 Miss. App. LEXIS 668 (Miss. Ct. App. 2008).

In a case where defendant was sentenced to eight years in prison with five years of post-release supervision after a guilty plea was entered to the crime of attempted burglary of a dwelling, a post-conviction relief motion was properly dismissed without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because there was no ineffective assistance of counsel where jurisdiction was included in an indictment, the charges were not contradictory, an attempt charge was appropriate, and appellant inmate's other self-serving arguments were wholly unsupported by the record. Moreover, a sentence was not illegal since a suspended sentence was not required in addition to post-release supervision, the sentence imposed was within the range permitted, and the inmate was not misinformed regarding his appellate rights. McKinney v. State, 7 So. 3d 291, 2008 Miss. App. LEXIS 626 (Miss. Ct. App. 2008).

Trial court properly summarily denied defendant's second motion for postconviction relief under Miss. Code Ann. § 99-39-11(2) because defendant asserted the same claim regarding probation revocation in both postconviction motions; the order denying the first petition for post-conviction relief was a final judgment from which defendant did not file an appeal. Lyons v. State, 990 So. 2d 262, 2008 Miss. App. LEXIS 513 (Miss. Ct. App. 2008).

Summary dismissal of a petitioner's motion for post-conviction relief, following the revocation of his post-release supervision and suspended sentence without an evidentiary hearing, was affirmed on appeal where the petitioner failed to demonstrate a claim procedurally alive and substantially showing a denial of a state or federal right. Reese v. State, 21 So. 3d 625, 2008 Miss. App. LEXIS 490 (Miss. Ct. App. 2008).

Defendant was not entitled to an evidentiary hearing with regard to his motion for post-conviction relief to the circuit court, alleging that the information was defective, his plea was involuntary, and he received ineffective assistance of counsel because defendant's motion failed to state any actionable claim under the Mississippi Uniform Post-Conviction Collateral Relief Act. Blackmore v. State, 988 So. 2d 393, 2008 Miss. App. LEXIS 421 (Miss. Ct. App. 2008).

Trial court did not err in deciding not to grant an evidentiary hearing where, in his order denying post-conviction relief, the trial court stated that it reviewed the pleadings and the court files and determined that no evidentiary hearing was necessary. Nichols v. State, 994 So. 2d 236, 2008 Miss. App. LEXIS 310 (Miss. Ct. App. 2008).

Trial court committed no error in refusing to grant an appellant an evidentiary hearing on his motion for postconviction relief where based on the record of his guilty plea hearing, it was clear that he was not entitled to any relief. McNickles v. State, 979 So. 2d 693, 2007 Miss. App. LEXIS 354 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 176 (Miss. 2008).

Record contained sufficient evidence to warrant an evidentiary hearing in order to determine whether defendant satisfied his obligations with respect to the plea agreement; if the trial court determined that defendant had substantially complied with his obligations under the plea agreement to his detriment, then the trial court was duty bound to sentence him consistent with his bargain, notwithstanding the absence of supporting affidavits. Callins v. State, 975 So. 2d 243, 2007 Miss. App. LEXIS 243 (Miss. Ct. App. 2007), rev'd, 975 So. 2d 219, 2008 Miss. LEXIS 106 (Miss. 2008).

In a petition for post-conviction relief, the inmate's counsel was not ineffective because he failed to allege ineffective assistance of counsel with enough specificity and the outcome of the proceedings would not have been different because defendant admitted that he was guilty of the crime of statutory rape; thus, under Miss. Code Ann. § 99-39-11(a), the trial court properly dismissed the ineffective assistance of counsel claim without an evidentiary hearing. Brooks v. State, 953 So. 2d 291, 2007 Miss. App. LEXIS 201 (Miss. Ct. App. 2007).

Request for post-conviction relief was properly denied without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) where the record contradicted a claim that counsel mistakenly informed defendant about the charge he was pleading guilty to, a claim of coercion, and a claim of ineffective assistance of counsel; the case number was in the heading of the document, defendant acknowledged an intent to nolle prosse a remaining charge, and the parties took notice of this agreement at the plea hearing. Hoyt v. State, 952 So. 2d 1016, 2007 Miss. App. LEXIS 175 (Miss. Ct. App. 2007).

Where appellant pled guilty to three counts of armed robbery, he filed a motion for post-conviction relief alleging that his guilty plea was not voluntary and that his trial counsel was ineffective in informing him as to his possible sentence, and he claimed that the sentencing recommendation by the district attorney was later changed to reflect the actual sentence appellant received; appellant's post-conviction relief motion was sufficient to withstand dismissal, and as appellant's claim of ineffective assistance of counsel was directly related to whether he in fact entered his plea voluntarily or involuntarily, this issue required an evidentiary hearing. Jones v. State, 949 So. 2d 872, 2007 Miss. App. LEXIS 72 (Miss. Ct. App. 2007).

Defendants were not entitled to an evidentiary hearing on their motions for post-conviction relief where they had no merit. Holland v. State, 956 So. 2d 322, 2007 Miss. App. LEXIS 56 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because he failed to show that his attorney persuaded him to plead guilty to sexual battery, assured him that he would be released in three or four years, or failed to obtain a private investigator. Caldwell v. State, 953 So. 2d 266, 2007 Miss. App. LEXIS 46 (Miss. Ct. App. 2007).

Petition for post-conviction relief was denied without an evidentiary hearing where a plea was entered to armed robbery because, despite counsel's failure to investigate the type of weapon actually used, no prejudice resulted since an inmate failed to show that he would have proceeded to trial. Hinton v. State, 947 So. 2d 979, 2006 Miss. App. LEXIS 381 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 94 (Miss. 2007).

Trial court did not err in summarily dismissing appellant's motion for post-conviction relief (PCR) without an evidentiary hearing as the only evidence provided for the PCR was appellant's own allegations that were contradicted by the transcript of the plea hearing. Smith v. State, 919 So. 2d 989, 2005 Miss. App. LEXIS 426 (Miss. Ct. App. 2005).

Inmate was not entitled to an evidentiary hearing at his motion for post-conviction relief where it was plainly evident from the face of the motion, annexed exhibits, and the prior proceedings that he was not entitled to any relief. Epps v. State, 926 So. 2d 242, 2005 Miss. App. LEXIS 991 (Miss. Ct. App. 2005).

Where appellant failed to include supporting affidavits, documents, and records to prove the facts in his petition for post-conviction relief, the summary dismissal of his petition was proper. Winston v. State, 893 So. 2d 274, 2005 Miss. App. LEXIS 111 (Miss. Ct. App. 2005).

Where a trial court properly found that an inmate's petition for post-conviction relief was time barred, there was no genuine issue of material fact to consider that necessitated an evidentiary hearing. Phillips v. State, 913 So. 2d 330, 2005 Miss. App. LEXIS 258 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief without a hearing was proper pursuant to Miss. Code Ann. § 99-39-11(2) where he was afforded a thorough plea hearing and where he also voluntarily entered his plea of guilty. The trial judge informed the inmate of both his rights and of the maximum sentence he could have received for the crime of robbery, to which he had pled guilty to. Sanders v. State, 900 So. 2d 1213, 2005 Miss. App. LEXIS 256 (Miss. Ct. App. 2005).

In his order the trial judge held that it plainly appeared on the face of the motion and all exhibits and prior proceedings that defendant was not entitled to any relief; moreover, where the trial court was not the court of proper jurisdiction an evidentiary hearing was not necessary, and defendant's claim was properly dismissed. Lyons v. State, 881 So. 2d 373, 2004 Miss. App. LEXIS 882 (Miss. Ct. App. 2004).

Where there was no record of what occurred at a plea hearing, and a trial court's order stated that the relevant documents were reviewed before a motion for postconviction relief was denied, no evidentiary hearing was required. Young v. State, 877 So. 2d 552, 2004 Miss. App. LEXIS 669 (Miss. Ct. App. 2004).

Circuit court properly dismissed defendant's motion for post-conviction relief without a hearing. The record did not support her allegations of ineffective assistance of counsel or that her guilty plea was involuntarily and unknowingly made. Graves v. State, 872 So. 2d 760, 2004 Miss. App. LEXIS 442 (Miss. Ct. App. 2004).

Petitioner's motion for post-conviction relief was properly dismissed without an evidentiary hearing, because it was clear from the record that petitioner was explicitly informed by the trial judge of his right against self-incrimination, and that a guilty plea would constitute a waiver of that right. Miller v. State, 870 So. 2d 667, 2004 Miss. App. LEXIS 308 (Miss. Ct. App. 2004).

Appellate court could not determine conclusively that there was no merit to defendant's assertions regarding lack of adequate notice of the probation revocation hearing; the form offered no evidence that defendant may have voluntarily waived the rights afforded him, such that the trial court erred in summarily denying relief. Mathis v. State, 2004 Miss. App. LEXIS 369 (Miss. Ct. App. Apr. 27, 2004), op. withdrawn, sub. op., 882 So. 2d 798, 2004 Miss. App. LEXIS 934 (Miss. Ct. App. 2004).

Where the inmate asserted that the transcript of the inmate's post-conviction relief evidentiary hearing was inaccurate and that the inmate was entitled to a new hearing, the trial court did not err under Miss. Code Ann. § 99-39-11(2) in denying the hearing, as there was nothing in the record to support the inmate's claim that the transcript was inaccurate; any problem in the telephone connection for the hearing was solved before the merits of the inmate's motion were raised. Putnam v. State, 877 So. 2d 468, 2003 Miss. App. LEXIS 1205 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 861 (Miss. 2004).

Under Miss. Code Ann. § 99-39-11(2), a trial court properly was not required to conduct an evidentiary hearing on a prisoner's motion for post-conviction relief, which was filed more than three years after the judgment of conviction, because the trial court no longer had the authority to change the sentence and this fact was apparent from the date stamp affixed to the face of the prisoner's motion. Brister v. State, 858 So. 2d 181, 2003 Miss. App. LEXIS 992 (Miss. Ct. App. 2003).

Trial court did not abuse its discretion by refusing to grant an evidentiary hearing on the issue of sentencing in a petition for post-conviction relief because the evidence showed that an inmate was told the maximum sentence for the crime of manslaughter during a plea hearing. Hollingsworth v. State, 852 So. 2d 612, 2003 Miss. App. LEXIS 925 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 867 (Miss. Ct. App. 2003).

Defendant's supported allegations that his guilty plea to murdering his girlfriend was involuntary and the result of coercion because his attorney refused to investigate an allegedly incorrect criminal record that would have shown defendant to be a habitual criminal could properly be rejected by the trial court considering defendant's motion for post-conviction relief without holding an evidentiary hearing; trial court could properly impose a life sentence without referring the matter to a jury. Riley v. State, 848 So. 2d 888, 2003 Miss. App. LEXIS 196 (Miss. Ct. App. 2003).

Trial court did not err in not considering appellant's amended supplemental brief prior to dismissing his motion for post-conviction collateral relief without an evidentiary hearing, where the trial court's finding that appellant's post-conviction relief request was without merit was supported by substantial credible evidence contained within the record. Hentz v. State, 852 So. 2d 70, 2003 Miss. App. LEXIS 102 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 699 (Miss. 2003).

Trial court acted properly in dismissing defendant's motion for post-conviction relief raising claims of ineffective assistance of counsel, that the indictment charging defendant with automobile burglary and escape was defective, and that the statutes under which defendant was charged, convicted, and sentenced were unconstitutional, where the claims were general in nature and were unsupported by evidence supporting the claims; trial court was not required to conduct an evidentiary hearing. Spearman v. State, 840 So. 2d 823, 2003 Miss. App. LEXIS 230 (Miss. Ct. App. 2003).

Trial court properly denied defendant's motion for post-conviction relief where defendant waived two claims of error by not pursuing the issues in the trial court and defendant's claim of ineffective assistance of counsel in pleading guilty to two counts of armed robbery and accepting concurrent 20-year sentences was without merit because the record reflected that counsel's incorrect advice was corrected by the trial court before defendant's guilty pleas were accepted. Donnelly v. State, 841 So. 2d 207, 2003 Miss. App. LEXIS 255 (Miss. Ct. App. 2003).

Defendant testified at defendant's plea hearing that defendant actively participated in the planning and execution of an armed robbery, the felony underlying the capital murder indictment; the transcript showed a careful inquiry by the trial court into defendant's understanding of defendant's constitutional rights, defendant's desire to waive those rights, and therefore, defendant was not entitled to an evidentiary hearing upon his motion for post-conviction relief. Bolton v. State, 831 So. 2d 1184, 2002 Miss. App. LEXIS 693 (Miss. Ct. App. 2002).

In the prisoner's action seeking to have the court award him credits against his sentence that had allegedly been improperly denied by the Mississippi Department of Corrections, after examining the motions, any annexed exhibits, and the prior pleadings in the case, the appellate court found no need for the circuit court to have granted a hearing in the case. Hill v. State, 838 So. 2d 994, 2002 Miss. App. LEXIS 637 (Miss. Ct. App. 2002).

Denial of the prisoner's post-conviction relief motion without an evidentiary hearing was proper where the appellate court found there was no defect in the factual basis for the prisoner's guilty plea to uttering a forgery, as the prisoner understood the charge and also signed a petition to enter a guilty plea, agreeing that the attorney had explained the charges. Moore v. State, 830 So. 2d 1274, 2002 Miss. App. LEXIS 640 (Miss. Ct. App. 2002).

Trial court did not abuse its discretion in denying defendant's motion for post-conviction relief from his conviction for escape without a hearing where defendant's motion did not allege facts showing defendant was entitled to relief. Knichel v. State, 824 So. 2d 659, 2002 Miss. App. LEXIS 460 (Miss. Ct. App. 2002).

Trial court did not err in denying defendant's motion for post-conviction relief challenging defendant's guilty plea to possession of cocaine on ten separate grounds where none of the claims made by defendant had any support in the record. Swift v. State, 815 So. 2d 1230, 2001 Miss. App. LEXIS 486 (Miss. Ct. App. 2001).

A defendant seeking post-conviction relief pursuant to Miss. Code Ann. § 99-39-11 is obligated to plead and offer sufficient proof of facts that would entitle defendant to an evidentiary hearing. Andrews v. State, 791 So. 2d 902, 2001 Miss. App. LEXIS 313 (Miss. Ct. App. 2001).

Trial court did not err in dismissing defendant's motion for post-conviction relief based on ineffective assistance of counsel without an evidentiary hearing as defendant's unsupported allegation that defendant's attorney told defendant that defendant would be sentenced to six years if defendant pleaded guilty to robbery instead of the ten years defendant received was clearly rebutted by the record of the the guilty plea hearing. Jones v. State, 795 So. 2d 589, 2001 Miss. App. LEXIS 355 (Miss. Ct. App. 2001).

The trial court improperly refused to grant an evidentiary hearing where an affidavit was presented in which the sole witness supporting one of the charges recanted his testimony. Hardiman v. State, 789 So. 2d 814, 2001 Miss. App. LEXIS 215 (Miss. Ct. App. 2001).

The petitioner was not entitled to an evidentiary hearing on his claims of ineffective assistance of counsel where the transcript of his plea hearing completely contradicted each and every allegation on which he based his claims. Rush v. State, 811 So. 2d 431, 2001 Miss. App. LEXIS 97 (Miss. Ct. App. 2001).

The defendant's claim that he was improperly denied the right to an evidentiary hearing on his allegation that his sentence was in violation of his plea agreement was without merit where the trial judge reviewed the petition and the plea hearing transcript and chose to rely on the defendant's sworn testimony that he understood the plea process. Rogers v. State, 811 So. 2d 367, 2001 Miss. App. LEXIS 44 (Miss. Ct. App. 2001).

The trial court did not err in denying the defendant an evidentiary hearing based on his claim of ineffective assistance of counsel, notwithstanding the submission of a letter from the defendant's attorney stating his erroneous belief that the defendant would be released in only five years, one-fourth of his 20-year sentence, as any wrongful advice given to the defendant concerning his possible sentence was cured by the trial judge's unambiguous explanation during the plea hearing that the defendant would be required to serve at least eight years of his 20-year sentence. Richardson v. State, 769 So. 2d 230, 2000 Miss. App. LEXIS 462 (Miss. Ct. App. 2000).

The trial court did not abuse its discretion in denying an evidentiary hearing on a motion for post-conviction relief since the defendant failed to provide supporting evidence to warrant an evidentiary hearing and his assertions, standing alone, were insufficient to warrant a finding that the trial court erred in denying him the benefit of an evidentiary hearing. Blanch v. State, 760 So. 2d 820, 2000 Miss. App. LEXIS 227 (Miss. Ct. App. 2000).

The petitioner was not entitled to an evidentiary hearing on his claim that he was duped by his own attorney into pleading guilty by the attorney's assurance that he would receive a maximum sentence of 10 years when, as it turned out, he received three 10-year sentences and one 15-year sentence, all to run consecutively, where the trial court inquired in some depth of the petitioner as to his understanding of his plea to ensure that he appreciated the fact that, by pleading guilty, he was exposing himself to the possibility of receiving the maximum sentence authorized by law. Wilson v. State, 760 So. 2d 862, 2000 Miss. App. LEXIS 257 (Miss. Ct. App. 2000).

The court properly denied the defendant an evidentiary hearing where he asserted that claims of constitutional proportion were supported by the facts of the case, but failed to specify what those claims were other than by vague assertions of ineffective assistance of counsel. Feemster v. State, 763 So. 2d 198, 2000 Miss. App. LEXIS 176 (Miss. Ct. App. 2000).

The court properly refused to conduct an evidentiary hearing as, even accepting the truth of his allegations in support of his claim for reconsideration of his sentence, it was evident that those facts did not form the basis for the requested relief. Potts v. State, 755 So. 2d 1196, 1999 Miss. App. LEXIS 491 (Miss. Ct. App. 1999).

A motion for post-conviction relief was appropriately denied without an evidentiary hearing where the movant failed to state his allegations with the "specificity and detail" required to establish a prima facie showing. Ford v. State, 708 So. 2d 73, 1998 Miss. LEXIS 60 (Miss. 1998).

Trial court was not authorized to summarily deny motion to vacate conviction and sentence after Supreme Court granted movant's application for leave to file motion for post-conviction relief. Hymes v. State, 703 So. 2d 258, 1997 Miss. LEXIS 638 (Miss. 1997).

Defendant's affidavit in post-conviction proceeding, alleging claims that were totally contrary to his sworn testimony given before trial court at time he entered his guilty plea to capital murder, did not require evidentiary hearing, where record was clear as to facts presented to trial court before guilty pleas were accepted, indicating that affidavit was a "sham." Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

Defendant's own affidavit was insufficient to entitle him to evidentiary hearing on his post-conviction petition. Marshall v. State, 680 So. 2d 794, 1996 Miss. LEXIS 486 (Miss. 1996).

Post-conviction relief petition which meets basis pleading requirement is sufficient to mandate evidentiary hearing unless it appears beyond doubt that petitioner can prove no set of facts in support of claim which would entitle him to relief. Robertson v. State, 669 So. 2d 11, 1996 Miss. LEXIS 68 (Miss. 1996).

Post-conviction claim of ineffective assistance of counsel is properly dismissed without benefit of evidentiary hearing where it is manifestly without merit, such as when defendant fails to allege with specificity and detail that his counsel's performance was deficient and prejudicial to defense. Robertson v. State, 669 So. 2d 11, 1996 Miss. LEXIS 68 (Miss. 1996).

A defendant was not entitled to an evidentiary hearing on his motion for post-conviction relief where the petition was time barred under § 99-39-5(2), and the defendant's allegations were insufficient to require the trial court to grant an evidentiary hearing where his claims were based primarily on the allegation that a witness was available to testify that the crime with which the defendant was charged had been committed by another person and that the witness was not available to make an affidavit because the defendant was incarcerated. Campbell v. State, 611 So. 2d 209, 1992 Miss. LEXIS 793 (Miss. 1992).

A defendant was not entitled to an evidentiary hearing where his motion for post-conviction relief was time barred under § 99-39-5 and the defendant's affidavit conflicted with the official court minutes of the proceedings leading up to the judgment under attack. Cole v. State, 608 So. 2d 1313, 1992 Miss. LEXIS 557 (Miss. 1992).

7. Answer.

Normally it was the duty and responsibility of the state to present arguments that refuted the inmate's motion for post-conviction relief and the state did not raise the issue below, nor did it raise it in its current brief; generally, the appellate court would decline to reach the state's argument that the inmate's petition was a successive writ; however, the state did not have an opportunity to respond and raise that defense because the trial judge summarily dismissed the inmate's motion without requiring an answer by the state. Knight v. State, 959 So. 2d 598, 2007 Miss. App. LEXIS 444 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 538 (Miss. 2007).

The trial court erred in not affording the state an opportunity to oppose a post-conviction relief motion prior to ruling on that motion where the trial court did not issue an order, prior to handing down its decision, directing the state to either file an answer to the motion or to take any other action in response to the motion. State v. Santiago, 773 So. 2d 921, 2000 Miss. LEXIS 212 (Miss. 2000).

8. Sentencing.

Circuit court properly dismissed appellant's motion for post-conviction relief because appellant's sentence was legal under supreme court precedent holding that statutes that permitted the trial court to sentence a defendant to "any term" of incarceration included life sentences. Young v. State, 245 So. 3d 510, 2017 Miss. App. LEXIS 590 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 886, 2018 Miss. LEXIS 287 (Miss. 2018).

Circuit court properly dismissed petitioner's motion for postconviction relief because petitioner was fully advised that his plea included the enhancement, and petitioner agreed on the record to the State's recitation of all of the necessary elements of the enhancement. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

Although a prisoner argued the trial court failed to advise him of his right to appeal his sentence, a post-conviction court properly dismissed the prisoner's motion for post-conviction relief because the prisoner pleaded guilty to manslaughter over a year after the amended version of Miss. Code Ann. § 99-35-101 went into effect and the amended statute denied the state appellate courts jurisdiction to hear appeals involving the validity of the sentence imposed by the trial court based on a guilty plea. Henderson v. State, 89 So. 3d 598, 2011 Miss. App. LEXIS 351 (Miss. Ct. App. 2011), cert. denied, 95 So. 3d 654, 2012 Miss. LEXIS 283 (Miss. 2012).

In a case in which an inmate appealed the trial court's summary dismissal of his post-conviction relief motion, the inmate argued unsuccessfully that the State failed to prove his habitual-offender status for sentencing. The indictment delineated five previous felony offenses for which he was convicted, and having submitted a plea petition to the circuit court in which he admitted to those prior felony convictions and having then entered a valid guilty plea to the principal offense as a habitual offender, the circuit court properly sentenced the inmate as a habitual offender. Joiner v. State, 32 So. 3d 542, 2010 Miss. App. LEXIS 56 (Miss. Ct. App. 2010).

Circuit court's denial of an inmate's motion to reinstate probation was correct because there was a sufficient showing that the inmate had violated a condition of his post-release supervision, and revocation was not ordered on the mere fact that the inmate had been arrested but was ordered in light of his agreement to revocation; according to the agreed order of revocation of post-release supervision, the inmate agreed that he had violated a condition of his post-release supervision by committing the felony offense of grand larceny, and in exchange for the revocation of post-release supervision and imposition of the fifteen-year sentence on the inmate's prior conviction, the State agreed not to present the grand larceny charge. Walters v. State, 21 So. 3d 1166, 2009 Miss. LEXIS 564 (Miss. 2009).

Trial court did not err in denying defendant's motion for post-conviction collateral relief, seeking to set aside his conviction and sentence for burglary of a dwelling house, because neither the trial court's decision to sentence defendant to the maximum amount allowed by Miss.

Code Ann. § 97-17-23, nor its subsequent decision to deny his plea-withdrawal request was an abuse of discretion; prior to accepting defendant's guilty plea, the trial court thoroughly queried him with regard to the voluntariness of his plea, carefully explained to him that whatever sentencing recommendation the State offered would not have to be accepted, and informed him that the trial court could impose any sentence allowed by law, and defendant willfully acknowledged that he fully understood that the State's promise to recommend a sentence carried with it no guarantee that its recommendation would bind the trial court to a particular sentence upon a plea of guilty. Burrough v. State, 9 So. 3d 368, 2009 Miss. LEXIS 143 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate contended that the imposition of a 30-year sentence violated U.S. Const. Amend. V and U.S. Const. Amend. XIV because the inmate's sentence did not exceed his life expectancy; the inmate was 27 years old, and his life expectancy was 64 years old. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate contended that he was denied due process when he received a 30-year sentence after pleading guilty to three counts of armed robbery. The inmate's claim of being a first-time offender was completely devoid of merit as he admitted to previous convictions of possession of stolen property and burglary of a vehicle. Oliver v. State, 20 So. 3d 16, 2009 Miss. App. LEXIS 202 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 522 (Miss. 2009).

In an appeal from a circuit court's summary dismissal of his motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2), a pro se inmate argued unsuccessfully that his sentence illegally exceeded the statutory maximum under Miss. Code. Ann. § 97-3-73, and therefore, it was illegal for the circuit court to institute and then revoke his post-release supervision. Since the inmate's sentence did not exceed the maximum allowable sentence as provided for in Miss. Code Ann. § 97-3-75, there was no merit to his argument that because his sentence exceeded the time allowed by the statute, his post-release supervision was not illegally instituted and revoked, there was no merit to his argument that he should have received credit for the time he spent on post-release supervision, and, under Miss. Code Ann. § 47-7-37, the circuit court had the right to reimpose the previously suspended 12-year sentence. Fluker v. State, 2 So. 3d 717, 2008 Miss. App. LEXIS 675 (Miss. Ct. App. 2008).

Order dismissing defendant's motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2) was upheld where defendant was accorded the minimum due process requirements to which defendant was entitled at a probation revocation hearing; defendant was given the opportunity to cross-examine the State's witnesses and to call witnesses. Morgan v. State, 995 So. 2d 787, 2008 Miss. App. LEXIS 248 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 633 (Miss. 2008).

Prisoner's motion for post-conviction relief was properly denied under Miss. Code Ann. § 99-39-11(2) because he was fully informed of his possible sentence as a consequence of his guilty plea to possession of methamphetamine, and the sentencing judge was not required to follow the state's sentencing recommendation. Callins v. State, 975 So. 2d 219, 2008 Miss. LEXIS 106 (Miss. 2008).

Defendant, who was sentenced to 15 years for felony child abuse under Miss. Code Ann. § 97-5-39(2), did not meet her burden to prove that she was entitled to post-conviction relief because: (1) no reason was presented why the mitigating evidence attached to her motion could not have been discovered previously, and (2) her sentence was within the statutory limits. Austin v. State, 971 So. 2d 1286, 2008 Miss. App. LEXIS 9 (Miss. Ct. App. 2008).

Where appellant pleaded guilty to possession of cocaine, he was sentenced to serve ten years concurrently with a sentence for a crime he committed in Tennessee. Appellant was not entitled to post-conviction relief, because the trial court did not impose an illegal sentence. Brown v. State, 920 So. 2d 1037, 2005 Miss. App. LEXIS 794 (Miss. Ct. App. 2005).

Appellant entered a guilty plea to armed robbery, the court accepted the State's recommendation and sentenced him to twenty-five years with three years to serve, twenty-two years suspended. While appellant was not entitled to a suspended sentence as a convicted felon, he benefitted from his illegally lenient sentence and could not obtain postconviction relief. Weathersby v. State, 919 So. 2d 262, 2005 Miss. App. LEXIS 427 (Miss. Ct. App. 2005).

Pursuant to Miss. Code Ann. § 99-39-11(1), the court did not err in denying defendant's motion for postconviction relief because his allegations that his sentence was the result of a breached plea bargain agreement entered between defense counsel and the district attorney materially contradicted the sworn assertions and acknowledgments found in his petition to enter a guilty plea. Sanchez v. State, 913 So. 2d 1024, 2005 Miss. App. LEXIS 313 (Miss. Ct. App.), cert. dismissed, 920 So. 2d 1008, 2005 Miss. LEXIS 605 (Miss. 2005).

Where appellant pled guilty to the armed robbery of a fast food restaurant, and received an effective sentence of seven years, the circuit court properly dismissed his motion for post-conviction relief without a hearing. Appellant's sentence was within statutory guidelines. Edmond v. State, 906 So. 2d 798, 2004 Miss. App. LEXIS 1135 (Miss. Ct. App. 2004).

9. Jurisdiction.

Supreme court could address each assignment of error defendant raised in his motion for post-conviction collateral relief (PCR) without procedural or doctrinal concern because although the record revealed that defendant filed a PCR motion on August 29, 2006, the record did not indicate that a judgment was ever entered with regard to the motion; the trial court decided to re-examine the May 8th PCR motion attached to defendant's writ of mandamus petition, together with the plea transcripts in the criminal case and found no merit to the motion, and based on that decision, the supreme court was in a position to review that final judgment. Burrough v. State, 9 So. 3d 368, 2009 Miss. LEXIS 143 (Miss. 2009).

Inmate's complaint filed with the circuit court for a review of the parole board's determinations was properly dismissed because the circuit court did not have the jurisdiction to grant or deny parole. Further, while the inmate had entitled his petitiona habeas corpus action, because the parole board had complete discretion to grant or deny parole, the inmate failed to state a claim that would have required an evidentiary hearing. Johnson v. Miller, 919 So. 2d 273, 2005 Miss. App. LEXIS 430 (Miss. Ct. App. 2005).

10. Disqualification and recusal.

Where the judge presiding over appellant's post-conviction motion served a prosecutorial role in the underlying criminal case, these inherent contradictory functions required his recusal. Failure to do so was reversible error. Ryals v. State, 914 So. 2d 285, 2005 Miss. App. LEXIS 769 (Miss. Ct. App. 2005).

Where the judge presiding over appellant's post-conviction motion served a prosecutorial role in the underlying criminal case, the judge should have been recused. It was an abuse of discretion for the judge to rule on appellant's motion for post-conviction relief. Ryals v. State, 914 So. 2d 285, 2005 Miss. App. LEXIS 769 (Miss. Ct. App. 2005).

11. Timeliness of motion.

Trial court properly dismissed defendant's petition for post-conviction collateral relief because it was untimely where he did not challenge his sentence for more than five years, he claimed no exception to the procedural time-bar, and his assertion that his sentencing order was ambiguous did not fall within the statutory exceptions. Shields v. State, 223 So. 3d 809, 2017 Miss. App. LEXIS 384 (Miss. Ct. App. 2017).

Appellant's motion for postconviction relief was untimely and thus, barred by the three-year statute of limitations of the Mississippi Uniform Postconviction Collateral Relief Act, because it was filed nearly nine years after appellant entered his guilty plea. Carter v. State, 204 So. 3d

791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; although claims of mental competency were not subject to the procedural bars or res judicata, appellant gave neither the circuit court nor his attorney any reason to question his competency at his guilty-plea hearing. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; appellant's claims of ineffective assistance and the voluntariness of his guilty pleas were subject to the procedural bars. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

Dismissal of defendant's motion for an out-of-time appeal of defendant's burglary conviction was appropriate because defendant no longer had the right to appeal at the time defendant revoked defendant's waiver of appeal. Therefore, defendant's revocation did not entitle defendant to an out-of-time appeal. Conwill v. State, 168 So. 3d 1080, 2013 Miss. App. LEXIS 778 (Miss. Ct. App. 2013), cert. denied, 140 So. 3d 940, 2014 Miss. LEXIS 299 (Miss. 2014).

In a post-conviction proceeding in which an inmate appealed the circuit court's denial of his motion as untimely under the three-year limitations period in Miss. Code Ann. § 99-39-5(a), since the Mississippi Supreme Court granted the inmate permission to file a motion for post-conviction collateral relief, as set forth in Miss. Code Ann. § 99-39-27, that was a finding of a prima facie case. The circuit court should have requested that the State respond to the motion; then, pursuant to Miss. Code Ann. § 99-39-19, it should have examined the record and determined whether an evidentiary hearing was required. Pittman v. State, 20 So. 3d 51, 2009 Miss. App. LEXIS 664 (Miss. Ct. App. 2009).

Where appellant's motion for post-conviction relief was filed outside the three-year statute of limitations imposed by Miss. Code Ann. § 99-39-5, the motion was time-barred; the trial court did not err by summarily dismissing the motion pursuant to Miss. Code Ann. 99-39-11(2). Barnes v. State, 949 So. 2d 879, 2007 Miss. App. LEXIS 70 (Miss. Ct. App. 2007).

Order dismissing defendant's second motion for postconviction relief pursuant to Miss. Code Ann. § 99-39-11(2) was upheld where it was filed after the expiration of the limitations period in § 99-39-5(2). No statutory exception was applicable; there was no intervening decision of either the Mississippi Supreme Court or the United States Supreme Court that would have a bearing on the outcome of the case, there was no newly discovered evidence, nor did he claim that his sentence had expired or that his probation, parole, or conditional release had been unlawfully revoked. Gaston v. State, 922 So. 2d 841, 2006 Miss. App. LEXIS 140 (Miss. Ct. App. 2006).

12. Dismissal.

Circuit court properly dismissed appellant's motion for post-conviction relief because appellant waived any right to challenge the sentence he received since he voluntarily agreed to his life sentence as part of his plea bargain; the circuit judge who accepted appellant's plea found that it was freely, voluntarily, knowingly, and intelligently made. Young v. State, 245 So. 3d 510, 2017 Miss. App. LEXIS 590 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 886, 2018 Miss. LEXIS 287 (Miss. 2018).

Trial court did not err in dismissing appellant's motion for postconviction relief because appellant was not denied his right to a speedy trial; a valid guilty plea operated as a waiver of the right to a speedy trial, and explained the majority of the delay was due to defendant firing his counsel and needing time to hire new counsel, and his desire for a mental evaluation. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Trial court did not err in dismissing appellant's motion for postconviction relief because the record reflected a sufficient factual basis in support of appellant's guilty plea and the offense of sexual battery of a child under fourteen years old; appellant testified as to his age at the time of the plea hearing, as well as his birth date, the State's offer of proof provided that the victim was under fourteen years old, and appellant did not contest that offer of proof. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Because appellant's argument that his sentence should be reduced or his probation modified was raised for the first time on appeal, it was procedurally barred, and appellant failed to implicate a fundamental constitutional right to except his argument from the procedural bar, therefore the trial court properly dismissed appellant's motion for postconviction relief. Monroe v. State, 203 So. 3d 1140, 2016 Miss. App. LEXIS 675 (Miss. Ct. App. 2016).

Circuit court did not err in summarily dismissing defendant's motion for post-conviction relief without an evidentiary hearing because the motion asserted claims for relief against more one judgment and the motion was time-barred, as it was filed outside the three years following the entry of defendant's convictions after his guilty pleas and was not subject to any of the statutory exceptions to the time-bar. McDonald v. State, 204 So. 3d 780, 2016 Miss. App. LEXIS 583 (Miss. Ct. App.), cert. denied, 205 So. 3d 1085, 2016 Miss. LEXIS 498 (Miss. 2016).

Circuit court properly dismissed petitioner's motion for postconviction relief because petitioner waived his right to a speedy trial by entering a plea of guilty. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

Trial court did not err in failing to conduct an evidentiary hearing before summarily denying petitioner's motion for post-conviction relief. Petitioner, who relied entirely on her own assertions, offered no new or additional proof other than her own affidavit. Carson v. State, 161 So. 3d 153, 2014 Miss. App. LEXIS 655 (Miss. Ct. App. 2014).

Circuit court properly dismissed appellant's motion for post-conviction relief. Among other things, appellant's claim that the use of a confidential informant to make a controlled buy of cocaine from appellant constituted a type of entrapment was without merit. Rustin v. State, 138 So. 3d 270, 2014 Miss. App. LEXIS 268 (Miss. Ct. App. 2014).

Trial court was not required to consider alternative sentencing when it revoked a probationer's post-release supervision because the court correctly determined that the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay restitution. Boone v. State, 148 So. 3d 377, 2014 Miss. App. LEXIS 100 (Miss. Ct. App.), cert. denied, 151 So. 3d 1017, 2014 Miss. LEXIS 493 (Miss. 2014).

Dismissal of the inmate's postconviction motion was erroneous, as the affidavits of the inmate and the inmate's sister indicated that he was misinformed as to his eligibility for trusty earned time, the inmate was entitled to an evidentiary hearing on whether his guilty plea was knowingly, intelligently, and voluntarily entered. In addition, the inmate successfully alleged that he received ineffective assistance of counsel due to the incorrect advice about his eligibility to earned time and thus, was entitled to an evidentiary hearing to explore the merits of that claim. Sylvester v. State, 113 So. 3d 618, 2013 Miss. App. LEXIS 233 (Miss. Ct. App. 2013).

Trial court did not err in dismissing appellant's motion for post-conviction relief because appellant entered a voluntary and intelligent guilty plea; the plea colloquy showed that the trial court fully questioned appellant on his understanding of the offense charged and its elements and the consequences of the guilty plea, and appellant indicated his knowledge of the charge, the maximum sentences available, and what rights he waived by entering his guilty plea. Byers v. State, 107 So. 3d 1071, 2013 Miss. App. LEXIS 65 (Miss. Ct. App. 2013).

Dismissal of an inmate's fifth post-conviction relief motion against the State was proper because the motion was filed over 25 years beyond the applicable 3-year limitations period, and thus was both time-barred under Miss. Code Ann. § 99-39-5(2), and successive-writ barred under Miss. Code Ann. § 99-39-23(6); the inmate failed to show any exceptions. Contrary to inmate's claim, his life sentence had not "expired," and, further, his mere attack on his attorney, without more, was insufficient to circumvent the procedural time-bar or successive-writ bar. Smith v. State, 118 So. 3d 180, 2013 Miss. App. LEXIS 101 (Miss. Ct. App. 2013).

Dismissal of inmate's motion for post-conviction relief was proper as there was no evidence that the inmate's guilty plea was illegal, involuntary, or coerced and his ineffective assistance claim failed because he did not provide any affidavits to support the claim and he had reaffirmed at his plea hearing that he was satisfied with counsel. Johnson v. State, 101 So. 3d 707, 2012 Miss. App. LEXIS 611 (Miss. Ct. App. 2012).

Summary dismissal of an inmate post-conviction motion under Miss. Code Ann. § 99-39-11(2) without an evidentiary hearing was proper as the trial court reviewed the record and determined that the inmate was not entitled to any relief; the dismissal was consistent with the evidence and testimony presented in the record. Hunt v. State, 99 So. 3d 269, 2012 Miss. App. LEXIS 636 (Miss. Ct. App. 2012).

Summary dismissal of a post-conviction motion under Miss. Code Ann. § 99-39-11(2) was proper as the inmate's due process rights were not violated and his guilty plea was knowing, intelligent, and voluntary where: (1) the indictment was not amended, and charged the inmate with possessing more than two grams but less than ten grams of cocaine with the intent to sell under Miss. Code Ann. § 41-29-139(a)(1); (2) the trial court thoroughly advised the inmate of his rights, the nature and elements of the charge against him, and the consequences of his guilty plea; (3) there was a factual basis for the plea under Miss. Unif. Cir. & Cty. R. 8.04(A)(3); (4) the trial court was satisfied that the inmate understood the trial court's explanations, and waived his rights as a criminal defendant; and (5) the trial court was also satisfied with the inmate's and defense counsel's responses as to the inmate's alleged mental illness. Hunt v. State, 99 So. 3d 269, 2012 Miss. App. LEXIS 636 (Miss. Ct. App. 2012).

Circuit court did not abuse its discretion in deeming appellant's second post-conviction (PCR) motion frivolous and ordering the forfeiture of sixty days of his earned-time credit under Miss. Code Ann. § 47-5-138(3)(b)(i) because appellant entered a voluntary guilty plea, which waived his right to challenge the search warrant; the PCR motion offered nothing more than conclusory allegations framed as newly discovered evidence, and it had no realistic chance of success, was not premised upon an arguably sound basis in fact and law, and set forth no facts that would warrant relief. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Circuit court did not err in dismissing appellant's second motion for post-conviction relief (PCR), which relied on the newly discovered evidence exception to attempt to circumvent the procedural bar, Miss. Code Ann. § 99-39-23(6), because the motion was successive and presented, at most, conclusory or impeaching evidence, not newly discovered evidence; the court of appeals affirmed the denial of appellant's first PCR motion, and prior to that ruling, appellant filed the second PCR motion. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Circuit court did not err in dismissing appellant's second motion for post-conviction relief (PCR), which relied on the newly discovered evidence exception to attempt to circumvent the procedural bar, Miss. Code Ann. § 99-39-23(6), because appellant was procedurally barred from his discrepancy-based attack; the court of appeals had previously affirmed the denial of appellant's attack on the validity of his guilty plea. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Post-conviction relief was properly dismissed based on an allegation that a guilty plea was involuntary under Miss. Unif. Cir. & Cty. R. 8.04(A)(3) because the record showed that appellant was fully informed and aware of what was involved in a drug court program, and he accepted its terms and obligations. Moreover, appellant did not receive ineffective assistance of counsel when his defense attorney recommended a guilty plea. Thomas v. State, 65 So. 3d 341, 2011 Miss. App. LEXIS 367 (Miss. Ct. App. 2011).

While a preliminary hearing was not conducted, because defendant failed to raise the issue at the final revocation hearing of defendant's suspended sentence and because defendant's claims were without merit, defendant was not entitled to postconviction relief under Miss. Code Ann. § 99-39-11(2). Felix v. State, 73 So. 3d 1194, 2011 Miss. App. LEXIS 357 (Miss. Ct. App.), cert. denied, 73 So. 3d 1168, 2011 Miss. LEXIS 522 (Miss. 2011).

Circuit court was not required to review the transcript of the prisoner's guilty plea before it resolved his postconviction relief motion under Miss. Code Ann. § 99-39-11(2). Evans v. State, 61 So. 3d 922, 2011 Miss. App. LEXIS 35 (Miss. Ct. App. 2011).

Circuit court did not err by dismissing the prisoner's postconviction relief motion because his guilty pleas waived any nonjurisdictional rights or defects, which included any complaints regarding the timing of the prosecution's disclosure that the prisoner's two accomplices would be testifying against him and there was no evidence that the prosecution had notice that the two accomplices would be testifying for the prosecution any earlier than when it disclosed that fact. Evans v. State, 61 So. 3d 922, 2011 Miss. App. LEXIS 35 (Miss. Ct. App. 2011).

In a case in which a pro se state inmate appealed a circuit court's dismissal of his petition for post-conviction relief (PCR), the circuit court properly treated the petition, which was styled as a "Petition to Clarify Sentence," as a petition for PCR, and it was barred as a successive writ. Johnson v. State, 31 So. 3d 647, 2010 Miss. App. LEXIS 139 (Miss. Ct. App. 2010).

Defendant was not entitled to relief as he alleged no set of facts in his motion that would entitle him to relief, and the trial court did not err when it summarily denied defendant's claim without requiring the State to file an answer to his claim or conducting an evidentiary hearing. Davis v. State, 29 So. 3d 788, 2009 Miss. App. LEXIS 397 (Miss. Ct. App. 2009), cert. denied, 29 So. 3d 774, 2010 Miss. LEXIS 137 (Miss. 2010).

Trial court properly summarily dismissed defendant's motion for postconviction relief under Miss. Code Ann. § 99-39-11(1) because no affidavits had been submitted to the trial court by the time the trial court ruled on the motion. Mayhan v. State, 26 So. 3d 1072, 2009 Miss. App. LEXIS 327 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 58 (Miss. 2010).

Where appellant served four years of his six-year sentence for the sale of cocaine, he was released; upon the revocation of his suspended two-year sentence, the trial court violated Miss. Code Ann. § 47-7-37 and appellant's protection against double jeopardy by imposing a three-year term of imprisonment. Therefore, the circuit court erred in its dismissal of appellant's motion for post-conviction relief under Miss. Code Ann. § 99-39-11(2). Branch v. State, 996 So. 2d 829, 2008 Miss. App. LEXIS 782 (Miss. Ct. App. 2008).

Where appellant filed a successive writ for post-conviction relief arguing that he was denied due process of the law, the trial court dismissed appellant's motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-11(2) for lack of merit. Crosby v. State, 982 So. 2d 1003, 2008 Miss. App. LEXIS 311 (Miss. Ct. App. 2008).

13. Mental evaluation.

Defendant presented sufficient evidence supporting the denial of defendant's fundamental right not to be convicted while incompetent to survive the summary dismissal of defendant's motion for postconviction relief. Smith v. State, 149 So. 3d 1027, 2014 Miss. LEXIS 544 (Miss. 2014), overruled, overruled in part, Pitchford v. State, 240 So. 3d 1061, 2017 Miss. LEXIS 420 (Miss. 2017).

Although a prisoner argued the trial court failed to conduct a mental evaluation and a competency hearing under Miss. Unif. Cir. & Cty. R. 9.06, a post-conviction court properly dismissed the prisoner's motion for post-conviction relief because the prisoner indicated in his plea petition that he did not have a mental impairment and responded to the trial judge during the plea colloquy that he had never been treated for a mental disorder. Henderson v. State, 89 So. 3d 598, 2011 Miss. App. LEXIS 351 (Miss. Ct. App. 2011), cert. denied, 95 So. 3d 654, 2012 Miss. LEXIS 283 (Miss. 2012).

14. Standard of review.

An appellate court will employ a de novo standard of review of a trial court's grant or denial of summary judgment and examine all the evidentiary matters before it. In a post-conviction relief (PCR) case, a court should also consider the record of the underlying judgment that is the subject of the PCR motion. Anderson v. State, — So. 3d —, 2015 Miss. App. LEXIS 171 (Miss. Ct. App. Mar. 31, 2015), sub. op., 185 So. 3d 403, 2015 Miss. App. LEXIS 426 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

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39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

Note: Evolving Standards of Decency in Mississippi: Chase v. State, Capital Punishment, and Mental Retardation, 25 Miss. C. L. Rev. 221, Spring, 2006.

§ 99-39-13. Answer; affirmative defenses.

The answer shall respond to all of the allegations of the motion and shall assert such affirmative defenses as the state may deem appropriate.

HISTORY: Laws, 1984, ch. 378, § 7, eff from and after passage (approved April 17, 1984).

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

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Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-15. Requests for discovery.

(1) A party may invoke the processes of discovery available under the Mississippi Rules of Civil Procedure or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.

(2) Requests for discovery shall be accomplished by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.

HISTORY: Laws, 1984, ch. 378, § 8, eff from and after passage (approved April 17, 1984).

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Guilty Pleas.

1. In general.

To the extent that information obtained pursuant to the rule's discovery mechanism is relevant to a petition for post-conviction relief, it must be attached to the petition, at which time the State will have access to it; if the petitioner is able to demonstrate a substantial showing of the denial of a state or federal right and is allowed to proceed to the trial court, the State is allowed access to the full spectrum of civil discovery, which it may employ to prepare and defend its case. Corrothers v. State, 189 So. 3d 612, 2015 Miss. LEXIS 468 (Miss. 2015).

In a motion for postconviction relief based on ineffective assistance of counsel, where inmate did not show how granting his request for post-conviction discovery would have helped his case, only alleging that his motion should have been granted, the circuit court did not act arbitrarily or capriciously in denying the montion. Cherry v. State, 24 So. 3d 1048, 2010 Miss. App. LEXIS 4 (Miss. Ct. App. 2010).

Where an inmate pled guilty to murder, but argued that it was a "crime of passion," it was not error to deny the inmate's motion for the production of the transcript of the partial trial because the inmate improperly equated a "crime of passion" with a killing in the heat of passion, and there was nothing to suggest that the victim did anything in the moments prior to death to provoke or arouse sufficient passion to cause the inmate to kill the victim in a moment of rage. Lawrence v. State, 970 So. 2d 1291, 2007 Miss. App. LEXIS 366 (Miss. Ct. App. 2007).

Trial judge did not abuse her discretion by refusing to grant defendant's motion to conduct discovery as there was no good cause to grant the discovery requests. Hubanks v. State, 952 So. 2d 254, 2006 Miss. App. LEXIS 544 (Miss. Ct. App. 2006), cert. denied, 951 So. 2d 563, 2007 Miss. LEXIS 171 (Miss. 2007).

Inmate's post-conviction relief petition was properly denied because the inmate did not show good cause for discovery under the Mississippi Post-Conviction Collateral Relief Act; the record showed that the right to discovery had been waived in a plea hearing. Hollingsworth v. State, 852 So. 2d 612, 2003 Miss. App. LEXIS 925 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 867 (Miss. Ct. App. 2003).

Decision by trial judge to refuse to admit the facts contained with defendant's requests was proper because defendant failed to obtain leave of court to file the discovery. Sanders v. State, 846 So. 2d 230, 2002 Miss. App. LEXIS 388 (Miss. Ct. App. 2002).

Defendant failed to meet his burden and substantiate facts essential to proving need and prejudice when requesting a free copy of his guilty plea hearing transcript. Walton v. State, 752 So. 2d 452, 1999 Miss. App. LEXIS 692 (Miss. Ct. App. 1999).

This section has no application to a request by a prisoner for a change in his location. Rochell v. State, 748 So. 2d 103, 1999 Miss. LEXIS 295 (Miss. 1999).

Petitioner convicted of 2 counts of armed robbery was not entitled to additional discovery in his postconviction proceedings in light of failure of his case to withstand motion for summary judgment and lack of showing that information he sought was relevant to issues he raised in his postconviction relief petition. Roland v. State, 666 So. 2d 747, 1995 Miss. LEXIS 600 (Miss. 1995).

A prisoner who has filed a proper motion pursuant to the Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.) may be entitled to trial transcripts or other relevant documents under the discovery provisions of § 99-39-15, upon good cause shown and in the discretion of the trial judge. If the prisoner's request for transcripts or other documents is denied, and his or her overall petition is ultimately denied, then the prisoner may appeal the denial of the petition for collateral relief pursuant to § 99-39-25 and, within that appeal, the prisoner may include the claim that the denial of his or her request for transcripts or other documents was error. However, nothing in the Uniform Post-Conviction Collateral Relief Act or elsewhere gives the prisoner the right to institute an independent, original action for a free transcript or other documents, and then if dissatisfied with the trial court's ruling, to directly appeal that ruling to the Supreme Court as a separate and independent action. Fleming v. State, 553 So. 2d 505, 1989 Miss. LEXIS 476 (Miss. 1989), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

2. Guilty Pleas.

Defendant's plea petition was not an oral statement in open court, but a sworn document and similarly to statements in open court, it could be used to discredit defendant's post-plea allegations that defendant's guilty plea was involuntary; thus, in defendant's post-conviction action, the trial judge properly determined that summary dismissal was appropriate and no transcript would be ordered, where the plea petition fully enumerated the rights defendant was waiving, and informed defendant of the maximum possible sentence. Ward v. State, 879 So. 2d 452, 2003 Miss. App. LEXIS 1200 (Miss. Ct. App. 2003), cert. denied, 882 So. 2d 234, 2004 Miss. LEXIS 1009 (Miss. 2004).

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Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Lawyers' Edition.

Prosecution's failure to preserve potentially exculpatory evidence as violating criminal defendant's due process rights under Federal Constitution–Supreme Court cases. 102 L. Ed. 2d 1041.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-17. Expansion of record.

(1) If the motion is not dismissed summarily, the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.

(2) The expanded record may include, without limitation, letters predating the filing of the motion in the court, documents, exhibits and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

(3) In any case in which an expanded record is directed, copies of the letters, documents, exhibits and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness.

(4) The court may require the authentication of any material under subsection (1) or (2) of this section.

HISTORY: Laws, 1984, ch. 378, § 9, eff from and after passage (approved April 17, 1984).

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

1. In general.

Trial court concluded that an expert in psychology would not assist in determining whether counsel was effective; thus, the trial court believed defendant's request to proceed ex parte on application for funds for an expert psychologist was both beyond the scope of review and unnecessary, and defendant provided no authority to support his petition that an expert in psychology was required to prove a claim for ineffective assistance of counsel. Burns v. State, 879 So. 2d 1000, 2004 Miss. LEXIS 722 (Miss. 2004).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-19. Evidentiary hearing; summary judgment.

(1) If the motion is not dismissed at a previous stage of the proceeding, the judge, after the answer is filed and discovery, if any, is completed, shall, upon a review of the record, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice shall require.

(2) The court may grant a motion by either party for summary judgment when it appears from the record that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.

HISTORY: Laws, 1984, ch. 378, § 10, eff from and after passage (approved April 17, 1984).

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Timeliness.
3. Guilty plea.
4. Defective indictment.
5. Habeas corpus.
6. Procedure.

1. In general.

Post-conviction relief (PCR) actions are civil proceedings, and summary judgment is explicitly provided for in the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-1 et seq. The fact that the Supreme Court of Mississippi has granted leave to file a PCR motion in a trial court does not make the petition, once filed, immune to summary judgment. Anderson v. State, — So. 3d —, 2015 Miss. App. LEXIS 171 (Miss. Ct. App. Mar. 31, 2015), sub. op., 185 So. 3d 403, 2015 Miss. App. LEXIS 426 (Miss. Ct. App. 2015).

Miss. Code Ann. § 99-39-19(1) stands for the principle that a movant is not automatically entitled to an evidentiary hearing simply because the supreme court granted the movant's request for leave to proceed in the circuit court. Sturkey v. State, 174 So. 3d 870, 2014 Miss. App. LEXIS 675 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 475 (Miss. 2015).

Reversal of a postconviction court's denial of defendant's motion for postconviction relief and remand for an evidentiary hearing on the issue of why the trial court ordered a mental evaluation was appropriate because significant ambiguity surrounded the reason the court ordered a mental evaluation. Smith v. State, 149 So. 3d 1027, 2014 Miss. LEXIS 544 (Miss. 2014), overruled, overruled in part, Pitchford v. State, 240 So. 3d 1061, 2017 Miss. LEXIS 420 (Miss. 2017).

Nothing prevented a trial court, pursuant to Miss. Code Ann. § 99-39-19, from finding that an evidentiary hearing was not warranted and summarily dismissing a probationer's post-conviction relief motion, even though the court had ordered the State of Mississippi to file an answer, under Miss. Code Ann. § 99-39-11(3), to the probationer's motion. Hall v. State, 189 So. 3d 631, 2014 Miss. App. LEXIS 41 (Miss. Ct. App. 2014).

Defendant was not entitled to an evidentiary hearing on defendant's motion for post-conviction relief because defendant's claims of newly discovered evidence and ineffective assistance of counsel were without merit. Defendant's alleged newly discovered evidence would not have exculpated defendant from the charges, while defendant failed to show that defense counsel was ineffective. Pittman v. State, 121 So. 3d 253, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. 2013).

Circuit court did not err in denying an inmate's motion for post-conviction relief because it reviewed the record when dismissing the motion as required under Miss. Code Ann. § 99-39-19(1); the order responded directly to the record and the motion itself. Barnes v. State, 51 So. 3d 986, 2010 Miss. App. LEXIS 313 (Miss. Ct. App. 2010), cert. denied, 50 So. 3d 1003, 2011 Miss. LEXIS 44 (Miss. 2011).

Trial court did not err by denying an inmate's motion for post-conviction relief without an evidentiary hearing because the State filed an answer to the motion for post-conviction relief, and the trial court granted the inmate's motion to conduct discovery; it was clear from the record that the trial court considered the inmate's motion on the merits and found that an evidentiary hearing was not necessary Lattimore v. State, 37 So. 3d 678, 2010 Miss. App. LEXIS 50 (Miss. Ct. App. 2010).

Because an inmate was not entitled to any relief, the trial court was within its power to dismiss the petition for post-conviction relief without conducting an evidentiary hearing. Thompson v. State, 990 So. 2d 265, 2008 Miss. App. LEXIS 520 (Miss. Ct. App. 2008).

Nothing about defendant's motion for post-conviction relief indicated a need for further exploration of his issues in the context of an evidentiary hearing; it was clear from the record that defendant was entitled to no relief. Watts v. State, 981 So. 2d 1034, 2008 Miss. App. LEXIS 272 (Miss. Ct. App. 2008).

It was not error to refuse an evidentiary hearing in a case seeking post-conviction relief where a trial court determined that the allegations in the motions were entirely without merit and were frivolous in nature. Coleman v. State, 971 So. 2d 637, 2007 Miss. App. LEXIS 420 (Miss. Ct. App. 2007), cert. denied, 2007 Miss. LEXIS 681 (Miss. Dec. 6, 2007), cert. denied, 2007 Miss. LEXIS 684 (Miss. Dec. 6, 2007), cert. denied, 973 So. 2d 244, 2007 Miss. LEXIS 686 (Miss. 2007).

Order summarily dismissing petitioner's motion for post-conviction relief was upheld where his allegations alone were insufficient to have required the trial judge to grant an evidentiary hearing. Stewart v. State, 938 So. 2d 344, 2006 Miss. App. LEXIS 694 (Miss. Ct. App. 2006).

A review of the record showed that no evidentiary hearing was required for defendant's post-conviction petition for relief; therefore, the lower court properly denied defendant post-conviction relief. Barnes v. State, 937 So. 2d 1006, 2006 Miss. App. LEXIS 676 (Miss. Ct. App. 2006).

Denial of the inmate's petition for post-conviction relief was appropriate because there was no confusion as to his understanding of his plea and sentence; he signed the petition to enter a plea of guilty and acknowledged his signature to it at the plea hearing, and thus the trial court was not required to conduct an evidentiary hearing under Miss. Code Ann. § 99-39-19. Harris v. State, 944 So. 2d 900, 2006 Miss. App. LEXIS 567 (Miss. Ct. App. 2006).

Denial of the inmate's petition for post-conviction relief without an evidentiary hearing was proper pursuant to Miss. Code Ann. § 99-39-19 because his claim that his counsel was ineffective was without merit. The inmate did not suggest that mitigating evidence was available and did not identify a witness or situation that might have convinced the judge to impose a lighter sentence. McNabb v. State, 915 So. 2d 478, 2005 Miss. App. LEXIS 609 (Miss. Ct. App. 2005).

Defendant was not entitled to an evidentiary hearing where no disputed fact existed and he was not misinformed about parole eligibility; the trial judge informed defendant of the three sentencing possibilities and indicated the penalty for pleading guilty to murder. Smith v. State, 910 So. 2d 635, 2005 Miss. App. LEXIS 151 (Miss. Ct. App. 2005).

Leave to proceed in the trial court did not automatically grant the petitioner a hearing on his petition for postconviction relief; once under the jurisdiction of the trial court, that court had the authority to render an opinion with or without an evidentiary hearing, and the trial court did not err in denying defendant's petition upon finding that his claims lacked merit. Townsend v. State, 892 So. 2d 282, 2004 Miss. App. LEXIS 1035 (Miss. Ct. App. 2004).

Once the defendant came under the jurisdiction of the trial court, that court had the authority to render an opinion with or without an evidentiary hearing; because defendant failed to offer any evidence in support of his claims other than the requests for admission that were properly stricken, the court did not abuse its discretion in finding that defendant had presented no material fact upon which relief could be granted. Sanders v. State, 846 So. 2d 230, 2002 Miss. App. LEXIS 388 (Miss. Ct. App. 2002).

Trial court did not err in denying defendant's motion for post-conviction relief challenging defendant's guilty plea to possession of cocaine on ten separate grounds where none of the claims made by defendant had any support in the record. Swift v. State, 815 So. 2d 1230, 2001 Miss. App. LEXIS 486 (Miss. Ct. App. 2001).

The statute authorizes the use of the summary judgment procedure found in M.R.C.P. 56. Reeder v. State, 783 So. 2d 711, 2001 Miss. LEXIS 106 (Miss. 2001).

The petitioner was not entitled to an evidentiary hearing on his claims that his trial counsel was ineffective both because he was coerced into entering a guilty plea and because counsel failed to make pretrial preparations and failed to make pretrial motions. McMillian v. State, 774 So. 2d 454, 2000 Miss. App. LEXIS 308 (Miss. Ct. App. 2000).

An evidentiary hearing on the defendant's petition for post-conviction relief was properly denied where his claims regarding the ineffectiveness of his attorney were either unsupported or contradicted on the record. McCuiston v. State, 758 So. 2d 1082, 2000 Miss. App. LEXIS 165 (Miss. Ct. App. 2000).

Defendant's affidavit in post-conviction proceeding, alleging claims that were totally contrary to his sworn testimony given before trial court at time he entered his guilty plea to capital murder, did not require evidentiary hearing, where record was clear as to facts presented to trial court before guilty pleas were accepted, indicating that affidavit was a "sham." Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

Defendant's own affidavit was insufficient to entitle him to evidentiary hearing on his post-conviction petition. Marshall v. State, 680 So. 2d 794, 1996 Miss. LEXIS 486 (Miss. 1996).

Defendants' claim of ineffective assistance of counsel based on allegation that if they had known that their attorneys would not call any witnesses, they would have themselves testified, amounted to sham, and therefore defendants were not entitled to evidentiary hearing to set aside validly imposed sentences based upon this claim, considering that, prior to testimony commencing, trial judge made detailed and lengthy presentation to defendants on subject of their right to testify and defendants affirmatively responded to judge's questions as to whether they understood that they had right to testify regardless of what any other person wished or ordered them to do. King v. State, 679 So. 2d 208, 1996 Miss. LEXIS 430 (Miss. 1996).

To be entitled to evidentiary hearing on claim of ineffective assistance of counsel, petitioner must allege with specificity and detail that counsel's performance was deficient and that deficient performance so prejudiced his defense so as to deprive him of a fair trial. Moore v. State, 676 So. 2d 244, 1996 Miss. LEXIS 328 (Miss. 1996).

Evidentiary hearing was required in post-conviction proceeding to determine whether defendant's attorney failed to inform him of his right to appeal conviction where attorney's response to defendant's petition for out-of-time appeal stated generally that he advised defendant of options and that he specifically advised defendant that district attorney would drop other pending charges if defendant would forego his appeal, and defendant stated only that he was not going to appeal his conviction, but nothing showed that defendant had been informed of his right to appeal. Summerville v. State, 667 So. 2d 14, 1996 Miss. LEXIS 2 (Miss. 1996).

To be entitled to evidentiary hearing on merits of ineffectiveness of counsel claim, defendant must establish prima facie claim on both prongs of Strickland test by alleging with specificity and detail that his counsel's performance was deficient and that the deficient performance prejudiced defense so as to deprive him of fundamentally fair trial. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Evidentiary hearing is not necessary where allegations in petition for post-conviction relief are specific and conclusory. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

The failure of a trial court to grant an evidentiary hearing was error where the court was faced with contradictory affidavits disputing the essential facts of the defendant's claim that he was denied his right to an appeal through no fault of his own, and the affidavit of the defendant's attorney fell short of demonstrating an effective waiver of the right to appeal. Harris v. State, 578 So. 2d 617, 1991 Miss. LEXIS 184 (Miss. 1991).

The failure of a trial court to grant an evidentiary hearing was error where the court was faced with contradictory affidavits disputing essential facts of the defendant's claim that he was denied his right to an appeal through no fault of his own. However, an evidentiary hearing is not to be ordered every time there are contradictory affidavits. In order for a contested fact to require an evidentiary hearing, it must be material. Moreover, where an affidavit is overwhelmingly belied by unimpeachable documentary evidence in the record so that the court can conclude that the affidavit is a sham, no hearing is required. Wright v. State, 577 So. 2d 387, 1991 Miss. LEXIS 182 (Miss. 1991).

Defendants were not entitled to an evidentiary hearing on their claims that they were denied the right to testify in their own defense at trial, where their claims were based on allegations that they received substantial advice from their attorneys that it would be contrary to their interests to testify and that they were unaware of the right of allocution, but the defendants did not suggest that they ever questioned their attorneys regarding their rights in this regard nor was there any suggestion that the attorneys gave any dubious legal advice on this point. Jaco v. State, 574 So. 2d 625, 1990 Miss. LEXIS 823 (Miss. 1990).

A judge would be disqualified from ruling on a defendant's motion for an evidentiary hearing under the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.) where the judge was also the district attorney who signed the indictment. Moore v. State, 573 So. 2d 688, 1990 Miss. LEXIS 782 (Miss. 1990).

2. Timeliness.

In a post-conviction proceeding in which an inmate appealed the circuit court's denial of his motion as untimely under the three-year limitations period in Miss. Code Ann. § 99-39-5(a), since the Mississippi Supreme Court granted the inmate permission to file a motion for post-conviction collateral relief, as set forth in Miss. Code Ann. § 99-39-27, that was a finding of a prima facie case. The circuit court should have requested that the State respond to the motion; then, pursuant to Miss. Code Ann. § 99-39-19, it should have examined the record and determined whether an evidentiary hearing was required. Pittman v. State, 20 So. 3d 51, 2009 Miss. App. LEXIS 664 (Miss. Ct. App. 2009).

A defendant was not entitled to an evidentiary hearing on his motion for post-conviction relief where the petition was time barred under § 99-39-5(2), and the defendant's allegations were insufficient to require the trial court to grant an evidentiary hearing where his claims were based primarily on the allegation that a witness was available to testify that the crime with which the defendant was charged had been committed by another person and that the witness was not available to make an affidavit because the defendant was incarcerated. Campbell v. State, 611 So. 2d 209, 1992 Miss. LEXIS 793 (Miss. 1992).

A defendant was not entitled to an evidentiary hearing where his motion for postconviction relief was time barred under § 99-39-5 and the defendant's affidavit conflicted with the official court minutes of the proceedings leading up to the judgment under attack. Cole v. State, 608 So. 2d 1313, 1992 Miss. LEXIS 557 (Miss. 1992).

3. Guilty plea.

Circuit court properly denied defendant's motion for post-conviction relief because at the plea hearing, defendant actually admitted to the crimes with which he was charged, acknowledged that he was satisfied with his counsel's services, raised no issue regarding the voluntariness of his guilty plea, and was not entitled to an evidentiary hearing. Bias v. State, 245 So. 3d 534, 2017 Miss. App. LEXIS 625 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 884, 2018 Miss. LEXIS 275 (Miss. 2018).

Appellant was entitled to an evidentiary hearing on the issues raised in his amended motion for postconviction collateral relief, since appellant met his evidentiary burden and presented sufficient evidence to support his claim that his attorneys gave him erroneous advice about his parole eligibility. As a result, the circuit court erred by denying appellant's request for an evidentiary hearing on whether appellant knowingly, intelligently, and voluntarily entered his guilty plea. Thinnes v. State, 196 So. 3d 204, 2016 Miss. App. LEXIS 455 (Miss. Ct. App. 2016).

In a case where defendant was sentenced to eight years in prison with five years of post-release supervision after a guilty plea was entered to the crime of attempted burglary of a dwelling, a post-conviction relief motion was properly dismissed without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because there was no ineffective assistance of counsel where jurisdiction was included in an indictment, the charges were not contradictory, an attempt charge was appropriate, and appellant inmate's other self-serving arguments were wholly unsupported by the record. Moreover, a sentence was not illegal since a suspended sentence was not required in addition to post-release supervision, the sentence imposed was within the range permitted, and the inmate was not misinformed regarding his appellate rights. McKinney v. State, 7 So. 3d 291, 2008 Miss. App. LEXIS 626 (Miss. Ct. App. 2008).

Evidentiary hearing was not required on appellant inmate's motion for post-conviction relief because there was no merit to the inmate's ineffective assistance of counsel claim or the inmate's claim that his guilty plea was involuntary. Busby v. State, 994 So. 2d 225, 2008 Miss. App. LEXIS 222 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 672 (Miss. 2008).

Defendant claimed that he should have been entitled to an evidentiary hearing on his claim for post-conviction relief; however, the record showed no genuine issue of material fact regarding defendant's claims, and consequently no evidentiary hearing was required. Prince v. State, 967 So. 2d 69, 2007 Miss. App. LEXIS 502 (Miss. Ct. App.), cert. dismissed, 966 So. 2d 172, 2007 Miss. LEXIS 581 (Miss. 2007).

Record contained sufficient evidence to warrant an evidentiary hearing in order to determine whether defendant satisfied his obligations with respect to the plea agreement; if the trial court determined that defendant had substantially complied with his obligations under the plea agreement to his detriment, then the trial court was duty bound to sentence him consistent with his bargain, notwithstanding the absence of supporting affidavits. Callins v. State, 975 So. 2d 243, 2007 Miss. App. LEXIS 243 (Miss. Ct. App. 2007), rev'd, 975 So. 2d 219, 2008 Miss. LEXIS 106 (Miss. 2008).

Denial of the inmate's petition for post-conviction relief was proper under Miss. Code Ann. § 99-39-19(1) because, since no evidence accompanied the inmate's motion to contradict the trial court's findings when the guilty plea was entered, he was not entitled to an evidentiary hearing under the Uniform Post-Conviction Collateral Relief Act, Miss. Code Annotated §§ 99-39-1 to 99-39-29. Hardiman v. State, 904 So. 2d 1225, 2005 Miss. App. LEXIS 394 (Miss. Ct. App. 2005).

Defendant's petition for post-conviction relief failed to include any affidavits, other than his own, or evidence to support his claims that his guilty plea was involuntary, and the plea agreement signed by defendant thoroughly explained the proceedings. Therefore, it was not error for the trial judge to deny an evidentiary hearing; moreover, he did not submit a transcript of the plea proceeding, and the existence of his claims within his brief alone could not be relied upon by the appellate court. Dearman v. State, 910 So. 2d 708, 2005 Miss. App. LEXIS 189 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief without a hearing was proper pursuant to Miss. Code Ann. § 99-39-19, where he was afforded a thorough plea hearing and where he also voluntarily entered his plea of guilty. The trial judge informed the inmate of both his rights and the maximum sentence he could have received for the crime of robbery, to which he had pled guilty. Sanders v. State, 900 So. 2d 1213, 2005 Miss. App. LEXIS 256 (Miss. Ct. App. 2005).

In petitioner's action for postconviction relief, he was not entitled to an evidentiary hearing where no evidence accompanied his motion to contradict the trial court's findings including his guilty plea, the record showed he understood that he was giving up his right to a jury trial, his right to testify and his right to appeal, and that the elements of the offense were fully explained to him. Jennings v. State, 896 So. 2d 374, 2004 Miss. App. LEXIS 1052 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 185 (Miss. 2005).

The defendant was properly denied an evidentiary hearing where he asserted that he pleaded guilty because he understood that if he failed to complete an Intensive Supervision/House Arrest Program successfully, he would only receive one year in jail, but the record established that he acknowledged to the trial judge that the maximum sentence on count one was 30 years in jail, a one million dollar fine, plus court costs and lab fees and that the maximum sentence on count two was 20 years in jail, a five hundred thousand dollar fine, plus court costs. Simmons v. State, 784 So. 2d 985, 2001 Miss. App. LEXIS 159 (Miss. Ct. App. 2001).

The defendant was not entitled to an evidentiary hearing on his claim that his guilty plea had been involuntary where he argued that his plea was the result of intimidation and threats of the possibility of receiving a life sentence made by his previous attorney, but nothing in the transcript from the plea hearing indicated that the plea was involuntary and he did not voice any dissatisfaction with his attorney when questioned. Stovall v. State, 770 So. 2d 1019, 2000 Miss. App. LEXIS 489 (Miss. Ct. App. 2000).

The petitioner was not entitled to an evidentiary hearing on his claim that he was duped by his own attorney into pleading guilty by the attorney's assurance that he would receive a maximum sentence of 10 years when, as it turned out, he received three 10-year sentences and one 15-year sentence, all to run consecutively, where the trial court inquired in some depth of the petitioner as to his understanding of his plea to ensure that he appreciated the fact that, by pleading guilty, he was exposing himself to the possibility of receiving the maximum sentence authorized by law. Wilson v. State, 760 So. 2d 862, 2000 Miss. App. LEXIS 257 (Miss. Ct. App. 2000).

The defendant was not entitled to a hearing on his claim that he had such a diminished intellectual capacity as to preclude an informed decision to enter a plea of guilty because the mere allegation that a person was enrolled in special education classes during that person's high school career does not make a prima facie case of mental or intellectual incompetency to enter an informed guilty plea to a criminal charge. Magee v. State, 752 So. 2d 1100, 1999 Miss. App. LEXIS 661 (Miss. Ct. App. 1999).

The petitioner was entitled to an evidentiary hearing to determine (1) whether his motion was excepted from the three-year statute of limitations period on the basis of a letter which was dated after the three year statute of limitations had run, and which stated that his federal sentence would run consecutively to his state sentence, notwithstanding that the trial judge intended his state sentence to run concurrently with his federal sentence, and (2) the status of his federal and state sentences. Bell v. State, 759 So. 2d 1111, 1999 Miss. LEXIS 230 (Miss. 1999).

The petitioner was entitled to an evidentiary hearing on his claim that his attorneys provided him with erroneous information on parole eligibility, thereby causing him to involuntarily enter a guilty plea. White v. State, 751 So. 2d 481, 1999 Miss. App. LEXIS 517 (Miss. Ct. App. 1999).

Defendant was not prejudiced in post-conviction proceeding when trial court refused to grant his request for transcript of hearing in which he pleaded guilty to capital murder, where record was amended to include transcript of plea proceeding, and affidavit in which defendant challenged voluntariness of his plea was inconsistent with transcript. Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

Postconviction petitioner convicted of 2 counts of armed robbery pursuant to his guilty plea was not entitled to evidentiary hearing on voluntariness of his plea, though petitioner disavowed voluntariness of his plea, where issues raised in defendant's petition were covered by guilty plea proceedings. Roland v. State, 666 So. 2d 747, 1995 Miss. LEXIS 600 (Miss. 1995).

Evidentiary hearing is necessary on postconviction challenge to plea if plea hearing does not reflect that petitioner was advised concerning rights of which he allegedly claims ignorance. Roland v. State, 666 So. 2d 747, 1995 Miss. LEXIS 600 (Miss. 1995).

A defendant was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether his guilty plea was entered voluntarily and intelligently where the transcript of the defendant's plea hearing did not reflect that he was advised concerning the rights of which he alleged he was ignorant; the State would be entitled to prove at the evidentiary hearing that the defendant learned of the rights in question, either from the trial judge or from some other source, prior to pleading guilty. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

A defendant who pleaded guilty without an affirmative expression by the trial court informing him that by pleading guilty he waived his constitutional right against self-incrimination, was entitled to an evidentiary hearing on the issue of whether his guilty plea was involuntarily and unintelligently made. Although the defendant's petition to the court to accept his plea of guilty recited that there was "no constitutional right or reason why this court should not accept this plea and enter sentence thereon," this was not sufficient to show that he was advised or informed of his constitutional right against self-incrimination. Horton v. State, 584 So. 2d 764, 1991 Miss. LEXIS 459 (Miss. 1991).

A defendant's allegations in his motion for postconviction collateral relief-that he was denied effective assistance of counsel and that, as a result, his guilty plea was not entered voluntarily-warranted an evidentiary hearing for a determination on those issues where the plea hearing had not been transcribed, so that it was not possible to make a determination of whether the defendant entered his plea voluntarily or whether his attorney provided effective assistance. Wilson v. State, 577 So. 2d 394, 1991 Miss. LEXIS 179 (Miss. 1991).

4. Defective indictment.

Evidentiary hearing was not mandated for the inmate pursuant to Miss. Code Ann. § 99-39-19(1) after he argued that his evidence proved that no grand jury was in session on the date of his indictment because the hearing would have been merely due to the existence of contradictory affidavits. Gray v. State, 841 So. 2d 204, 2003 Miss. App. LEXIS 247 (Miss. Ct. App. 2003).

Allegations that indictments were defective because the record did not identify them as the indictments returned by the appropriate grand jury and because they were not accompanied by the affidavit of the grand jury foreman, involved nonjurisdictional defects which were waived when the defendant entered a voluntary guilty plea and failed to timely assert his claims in the lower court. Moreover, it was not clear that the defendant would have been entitled to relief even if the claims had been timely asserted because the indictments were signed by the foreman of the grand jury and marked "filed" by the county circuit clerk. Brooks v. State, 573 So. 2d 1350, 1990 Miss. LEXIS 776 (Miss. 1990).

5. Habeas corpus.

Circuit court did not err in declining to conduct an evidentiary hearing on a petitioner's post-conviction relief motion after the Mississippi Supreme Court granted him leave to proceed with his ineffective assistance of counsel claim where Miss. Code Ann. § 99-39-19(1) stood for the proposition that an evidentiary hearing was not automatic, and the circuit court had complied with the specific direction to rule on the post-conviction relief motion. Sturkey v. State, 174 So. 3d 870, 2014 Miss. App. LEXIS 675 (Miss. Ct. App.

2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 475 (Miss. 2015).

Where appellant's claims that she was forced to confess her arson crimes was contradicted by the record of her plea hearing, the trial court properly disregarded the claims in her motion for post-conviction relief. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

No evidentiary hearing was necessary under Miss. Code Ann. § 99-39-19(1) on a prisoner's claim that he was entitled to earned time credit because there was no disputable fact, but merely a question of statutory interpretation. Rowland v. Britt, 867 So. 2d 260, 2003 Miss. App. LEXIS 753 (Miss. Ct. App. 2003), cert. denied, 868 So. 2d 345, 2004 Miss. LEXIS 248 (Miss. 2004).

Habeas corpus petitioner making collateral attack on guilty plea is entitled to evidentiary hearing. Williams v. State, 473 So. 2d 974, 1985 Miss. LEXIS 2192 (Miss. 1985).

6. Procedure.

Mississippi Supreme Court's grant of petitioner's request for leave to proceed in the circuit court constituted a finding of a prima facie case, but the circuit court dismissed petitioner's post-conviction motion before the State filed an answer and before discovery; therefore, the circuit court failed to follow the procedures of the statute in determining whether an evidentiary hearing was required, and the case was remanded. Skinner v. State, 270 So. 3d 1046, 2018 Miss. App. LEXIS 486 (Miss. Ct. App. 2018).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

(1) Failure by a prisoner to raise objections, defenses, claims, questions, issues or errors either in fact or law which were capable of determination at trial and/or on direct appeal, regardless of whether such are based on the laws and the Constitution of the state of Mississippi or of the United States, shall constitute a waiver thereof and shall be procedurally barred, but the court may upon a showing of cause and actual prejudice grant relief from the waiver.

(2) The litigation of a factual issue at trial and on direct appeal of a specific state or federal legal theory or theories shall constitute a waiver of all other state or federal legal theories which could have been raised under said factual issue; and any relief sought under this article upon said facts but upon different state or federal legal theories shall be procedurally barred absent a showing of cause and actual prejudice.

(3) The doctrine of res judicata shall apply to all issues, both factual and legal, decided at trial and on direct appeal.

(4) The term "cause" as used in this section shall be defined and limited to those cases where the legal foundation upon which the claim for relief is based could not have been discovered with reasonable diligence at the time of trial or direct appeal.

(5) The term "actual prejudice" as used in this section shall be defined and limited to those errors which would have actually adversely affected the ultimate outcome of the conviction or sentence.

(6) The burden is upon the prisoner to allege in his motion such facts as are necessary to demonstrate that his claims are not procedurally barred under this section.

HISTORY: Laws, 1984, ch. 378, § 11, eff from and after passage (approved April 17, 1984).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Waiver of objection.
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4. Exclusion of blacks from jury.
5. Collateral estoppel.
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1. In general.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 4 (Miss. Ct. App. Jan. 7, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 350 (Miss. 2020).

Although defendant argued on appeal that he received a disparate sentence because he was a black man and the alleged victim was a white woman, defendant did not make this argument in his motions for post-conviction relief; therefore, the issue was procedurally barred from further review. Bates v. State, 914 So. 2d 297, 2005 Miss. App. LEXIS 790 (Miss. Ct. App. 2005).

Although third postconviction relief petition to vacate sentence and resentence would generally have been successive writ barred, time-barred and procedurally barred, imposition of sentence of life imprisonment without benefit of parole for murder, imposed when statute did not permit or provide for said sentence, was unenforceable sentence and plain error, capable of being addressed. Stevenson v. State, 674 So. 2d 501, 1996 Miss. LEXIS 212 (Miss. 1996).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in postconviction relief statute are applicable in death penalty postconviction relief applications. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Heightened appellate scrutiny in death penalty cases does not require abandonment of Supreme Court's contemporaneous objection rule, which applies with equal force to death cases. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

A petitioner's petition for a writ of habeas corpus would be treated as a motion under § 99-39-5(1)(g), which authorizes a postconviction motion in the nature of collateral review by the petitioner, since she was in custody under a Mississippi conviction and claimed that she was "unlawfully held in custody." Although the petitioner was convicted in 1981, and the conviction was affirmed on direct appeal in 1983, the substantive portions of the Post-Conviction Relief Act, which became effective April 17, 1984, were applicable to the petition. Furthermore, the waiver and procedural bar provisions of the Act were applicable even though the petitioner was tried and convicted prior to the effective date of the Act. State v. Read, 544 So. 2d 810, 1989 Miss. LEXIS 251 (Miss. 1989).

Based on detailed review of entire record, defendant was ably represented by counsel at his trial, where numerous allegations of ineffective assistance of counsel were procedurally barred by this section, despite contention that such statutory bars should not be applied retroactively to defendant, where statute merely codified existing law and could therefore be applied to prisoners tried before its effective date. Stringer v. Scroggy, 675 F. Supp. 356, 1987 U.S. Dist. LEXIS 11203 (S.D. Miss. 1987), aff'd, 862 F.2d 1108, 1988 U.S. App. LEXIS 17949 (5th Cir. Miss. 1988).

Issue of discriminatory application of death penalty to defendant is procedurally barred, absent showing of cause, because issue had never been raised prior to appeal to Supreme Court. Johnson v. State, 508 So. 2d 1126, 1987 Miss. LEXIS 2588 (Miss. 1987).

Stay of execution not granted where alleged basis was that imposition of death sentence upon person too young to sit on jury violated Eighth Amendment proscription against cruel and unusual punishment, because it had never been raised before in this case and was therefore barred, and point had been summarily denied in prior cases. Johnson v. State, 508 So. 2d 1126, 1987 Miss. LEXIS 2588 (Miss. 1987).

Review was not mandated under this section of prosecutorial misconduct where the matter had not been raised on direct appeal, and the cumulative effect of alleged misconduct did not have the effect of denying the defendant a fair and impartial trial. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

Alleged error should be revived, in spite of any procedural bar, only where the claim is so novel that it has not previously been litigated, or, perhaps, where the appellate court has suddenly reversed itself on an issue previously settled. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

Petitioner's allegation that since all trial jurors were white he was denied an impartial jury guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, which allegation was not urged on direct appeal, would not be considered on motion to vacate judgment and sentence, where there was no information or document in the record indicating the race of the jurors, and he failed to assert any facts to show a systematic or intentional exclusion of any group by court officials to deny him a jury drawn from a cross-section of the community. Rideout v. State, 496 So. 2d 667, 1986 Miss. LEXIS 2606 (Miss. 1986).

Since allegations that trial court committed reversible error in allowing jury separation, and that petitioner had been compelled to be a witness against himself, were not alleged as error and raised on direct appeal, they could not be raised for first time on motion for postconviction relief, and were procedurally barred. Smith v. State, 490 So. 2d 860, 1986 Miss. LEXIS 2487 (Miss. 1986).

The application of the procedural bar of subsection (1) of this section would be inappropriate to a defendant who had had no earlier meaningful opportunity to present issue of denial of effective assistance of counsel. Perkins v. State, 487 So. 2d 791, 1986 Miss. LEXIS 2389 (Miss. 1986).

Petitioner who, although he had had opportunity to do so, had not earlier raised the issue of ineffectiveness of counsel did not meet the requirement of "cause" in subsection (4) of this section. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

Sentencing convicted defendant to life imprisonment under § 99-19-83 is violation of due process where indictment under which defendant is convicted clearly notices defendant that state is seeking only 7 year term; this plain error is of constitutional dimensions and may be raised in postconviction proceeding notwithstanding defendant's failure to raise issue at trial or on direct appeal, and is ground for resentencing under § 99-19-81. Smith v. State, 477 So. 2d 191, 1985 Miss. LEXIS 2067 (Miss. 1985).

2. Waiver of objection.

Petitioner's arguments concerning his indictment were waived because the court of appeals rejected his argument on direct appeal that the indictment's lack of a date rendered it insufficient; also, petitioner had not and could not show cause and actual prejudice in order to overcome his waiver of the issue. Forkner v. State, 277 So. 3d 946, 2019 Miss. LEXIS 19 (Miss. 2019).

Although defendant asserted that the indictment was fatally defective for failure to specify the contraband that defendant conspired to possess in a correctional facility, the two count indictment included the essential statutory elements of the charges against defendant and provided sufficient notice so that defendant suffered no prejudice in preparing a defense. Furthermore, defendant was procedurally barred from arguing an objection to a multi-count indictment on appeal because defendant failed to raise the objection at trial. Graham v. State, 204 So. 3d 329, 2016 Miss. App. LEXIS 113 (Miss. Ct. App. 2016).

Pursuant to Miss. Code Ann. § 99-39-21(1), (6), defendant was not entitled to postconviction collateral relief because defendant waived the issue of whether the State met its burden to prove the age of the victim, and defendant was unable to show that an error would have changed the result of defendant's conviction Nix v. State, 126 So. 3d 46, 2012 Miss. App. LEXIS 638 (Miss. Ct. App. 2012), aff'd, 126 So. 3d 40, 2013 Miss. LEXIS 591 (Miss. 2013).

Specifically, defendant contended that the plea agreement failed to articulate the State's burden of proof and since that burden was not announced in open court, his guilty plea was involuntary. However, since defendant did not raise that issue at the sentencing hearing, he waived its consideration on a motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-21(1); in any event, the transcript of the plea hearing revealed that the trial court properly informed defendant of the specific charges, the State's burden of proof, and made a detailed inquiry as to whether defendant understood the plea agreement that he had signed, and defendant stated under oath that he understood the plea agreement and the consequences of pleading guilty. Moore v. State, 906 So. 2d 793, 2004 Miss. App. LEXIS 1152 (Miss. Ct. App. 2004).

Defendant's contention that he was improperly restricted in his ability to attack the state's crime laboratory testing of the chemical makeup of the substances obtained from him was found by the court to be procedurally barred, where defense counsel offered no contention that the materials produced by the state to explain the process had not resolved the matter. Wright v. State, 863 So. 2d 1005, 2004 Miss. App. LEXIS 10 (Miss. Ct. App. 2004).

Denial of defendant's post-conviction motion was proper where defendant waived any objection to the failure to reference in the indictment the correct code section he was being charged with when he pled guilty. Moreover, because defendant did not raise issues related to the conduct of the criminal proceeding brought against him and the lack of effectiveness of his attorney before the trial court in his motion for post-conviction relief, because none of the issues raised were jurisdictional, and because he failed to make any legal arguments or citation to authority, defendant could not raise issues for the first time on appeal of denial of his post-conviction motion. Walker v. State, 861 So. 2d 354, 2003 Miss. App. LEXIS 1132 (Miss. Ct. App. 2003).

30-day statute of limitations for appealing defendant's due process claims had expired since the claims related to a final judgment reviewable on appeal post sentencing, Miss. Code Ann. § 99-39-21; any constitutional claims were waivable if not properly appealed within the limitation period, and the appellate court could overlook such a waiver where defendant did not meet the burden of showing cause and actual prejudice. Carr v. State, 881 So. 2d 261, 2003 Miss. App. LEXIS 988 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 863 (Miss. 2004).

In a case in which appellant sought post-conviction collateral relief because he claimed, among other things, that the indictment was defective, appellant failed to raise this issue before entering his guilty pleas to drug charges, thereby waiving possible complaints of a defective indictment. Hentz v. State, 852 So. 2d 70, 2003 Miss. App. LEXIS 102 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 699 (Miss. 2003).

Where the inmate claimed in a post-conviction appeal that the inmate's arrest was illegal for lack of a warrant or probable cause, the inmate waived the argument under Miss. Code Ann. § 99-39-21(1) by failing to raise the issue before entering a guilty plea, and did not offer any reason why the waiver should have been suspended. Battaya v. State, 861 So. 2d 364, 2003 Miss. App. LEXIS 1201 (Miss. Ct. App. 2003).

Defendant waived his objection to the sufficiency of indictments charging defendant with two counts of transferring cocaine, enhanced penalty, and being a habitual offender, by not raising his claims before the trial court and by voluntarily pleading guilty to the charges. Terry v. State, 839 So. 2d 543, 2002 Miss. App. LEXIS 699 (Miss. Ct. App. 2002).

Post-Conviction Collateral Relief Act provides procedure limited in nature to review those matters which, in practical reality, could not or should not have been raised at trial or on direct appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in postconviction relief statute are applicable in death penalty postconviction relief application. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

If no contemporaneous objection is made, the error, if any is waived, and that rule's applicability is not diminished in a capital case. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Doctrine of waiver barred capital murder defendant's postconviction claim that his prosecution by relative of victim deprived him of due process of law, where defense counsel was well aware of the kinship at time of trial but voiced no objection nor raised point on appeal, and defendant could not show cause or actual prejudice. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Doctrine of waiver or forfeiture barred capital murder defendant's postconviction claim that prosecutor directly commented on his failure to testify during guilt-finding phase of his trial, where no objection was raised during trial and no claim was raised on direct appeal. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Doctrine of waiver/forfeiture barred capital murder defendant's postconviction claim that he was denied his right to testify during guilt-finding and sentence-determination phases of his bifurcated trial, where issue was never raised at trial or on direct appeal, and in any event, claim failed on its merits, in that transcript indicated that defendant had elected not to testify in his own behalf. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Claim that "especially heinous, atrocious, or cruel" aggravating factor was submitted to jury in capital murder prosecution without limiting instruction in violation of Eighth Amendment will not be barred from consideration on postconviction review, even if defendant did not object at trial or on direct appeal. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

A capital murder defendant's objection to the admission of a blood sample obtained without a warrant was barred by the waiver of subsection (1) of this section where the defendant did not raise the issue on direct appeal, since the basis of the Fourth Amendment objection to the admission of illegally obtained evidence is well known, and the defendant had practically no chance of escaping conviction even without the blood sample evidence. Woodward v. State, 635 So. 2d 805, 1993 Miss. LEXIS 442 (Miss. 1993).

Allegations that indictments were defective because the record did not identify them as the indictments returned by the appropriate grand jury and because they were not accompanied by the affidavit of the grand jury foreman, involved nonjurisdictional defects which were waived when the defendant entered a voluntary guilty plea and failed to timely assert his claims in the lower court. Moreover, it was not clear that the defendant would have been entitled to relief even if the claims had been timely asserted because the indictments were signed by the foreman of the grand jury and marked "filed" by the county circuit clerk. Brooks v. State, 573 So. 2d 1350, 1990 Miss. LEXIS 776 (Miss. 1990).

Intervening decision alone does not preclude waiver under this section, but can only except case from effect of 3-year statute of limitations in § 99-39-5(2) and prohibition of second petitions in § 99-39-27(9). Wiley v. State, 517 So. 2d 1373, 1987 Miss. LEXIS 2915 (Miss. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2024, 100 L. Ed. 2d 610, 1988 U.S. LEXIS 2458 (U.S. 1988).

Issues not raised on direct appeal or at trial court are procedurally barred and not subject to further review by court; additionally, claims which were available, but not previously asserted on direct appeal, are waived. Wiley v. State, 517 So. 2d 1373, 1987 Miss. LEXIS 2915 (Miss. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2024, 100 L. Ed. 2d 610, 1988 U.S. LEXIS 2458 (U.S. 1988).

Certain claims were procedurally barred because they had not been raised in any previous court pleadings, nor had sufficient legal cause been shown to excuse such failure; claims were: confession taken in violation of right to counsel; the exclusion of mitigating and rebuttal evidence; allegation that comments of trial judge and district attorney diminished jury's sense of sentencing responsibility and were constitutionally impermissible; that state statute in force at time of trial was facially unconstitutional; and that juror was biased. Johnson v. State, 508 So. 2d 1126, 1987 Miss. LEXIS 2588 (Miss. 1987).

Claim of ineffective assistance of counsel is not procedurally viable where defendant waived issue when he declined to assert that point in his error coram nobis pleading; defendant had not shown sufficient cause to excuse this waiver where record reflected that trial counsel exited state court proceedings at conclusion of direct appeal and did not participate in presentation of error coram nobis pleading. Johnson v. State, 508 So. 2d 1126, 1987 Miss. LEXIS 2588 (Miss. 1987).

Issues respecting an indictment which are essentially procedural are subject to waiver if not timely preserved and presented on direct appeal. Perkins v. State, 487 So. 2d 791, 1986 Miss. LEXIS 2389 (Miss. 1986).

Waiver and procedural bar provisions of postconviction relief statute are largely codification of existing law and apply to case in which petitioner was tried prior to effective date of statute. Dufour v. State, 483 So. 2d 307, 1985 Miss. LEXIS 2357 (Miss. 1985), cert. denied, 479 U.S. 891, 107 S. Ct. 292, 93 L. Ed. 2d 266, 1986 U.S. LEXIS 4333 (U.S. 1986).

3. Procedural bar.

Petitioner's double jeopardy, equal-protection, and due-process claims could have been raised at trial or on direct appeal. All three claims were insufficient to surmount the waiver and successive-writ bars. Carter v. State, — So. 3d —, 2019 Miss. LEXIS 421 (Miss. Dec. 11, 2019).

Petitioner's application for leave to seek post-conviction relief in the trial court were denied because his claims that the indictment and the jury instructions were defective and his challenge to the multi-count indictment did not meet any recognized exception to the time, waiver, and successive-writ bars; even if the claims did meet a recognized exception, rhey lacked any arguable basis to warrant relief from the bars. Page v. State, — So. 3d —, 2019 Miss. LEXIS 109 (Miss. Mar. 12, 2019).

Petitioner did not raise an issue related to the prosecution's comments during closing argument on direct appeal, nor did he claim that counsel was ineffective for failing to do so, and thus his claim was procedurally barred. Hutto v. State, 286 So. 3d 653, 2019 Miss. LEXIS 358 (Miss. 2019).

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

In a 28 U.S.C.S. § 2254 proceeding in which the inmate asserted that his 25-year sentence without parole was disproportionate and violated the Eighth Amendment, since his appellate counsel was not ineffective under the Strickland for failing to raise the proportionality issue on appeal, his disproportionate sentencing challenge was procedurally barred pursuant to Miss. Code § 99-39-21(1). Shaffer v. Mississippi, — F. Supp. 3d —, 2015 U.S. Dist. LEXIS 159275 (S.D. Miss. Nov. 25, 2015).

Applicant's third postconviction relief (PCR) motion based on the right to a sentencing jury was procedurally barred because it was capable of determination at the time of his sentencing; moreover, the claim was barred because it was raised in a second or successive PCR motion. The applicant was not exempt from the procedural bars because the sentence imposed was not illegal; even if the trial court did not specifically confirm on the record that the applicant did not want a sentencing jury, the sentence did not exceed the maximum statutory penalty for the crime of aggravated assault on an elderly victim. Williams v. State, 218 So. 3d 1190, 2016 Miss. App. LEXIS 148 (Miss. Ct. App. 2016), aff'd, 222 So. 3d 265, 2017 Miss. LEXIS 178 (Miss. 2017).

In a capital murder case, a post-conviction claim based on a violation of the right to a fair trial by an impartial jury was not procedurally barred because trial and appellate attorneys had no reason to know that the jury had been influenced unduly by the bailiffs. At any rate, errors affecting fundamental constitutional rights were excepted from procedural bars; under the heightened standard employed in death penalty cases, all doubts were resolved in favor of the accused. Batiste v. State, 184 So. 3d 290, 2016 Miss. LEXIS 27 (Miss. 2016).

Petitioner, who appealed the denial of his petition for post-conviction relief, was procedurally barred from raising for the first time on appeal there was insufficient evidence that he was guilty of capital murder. Bass v. State, 174 So. 3d 883, 2015 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 483 (Miss. 2015).

Petitioner, who appealed the denial of his petition for post-conviction relief, was procedurally barred from raising the issue of ineffective assistance of counsel for the first time on appeal. Bass v. State, 174 So. 3d 883, 2015 Miss. App. LEXIS 101 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 483 (Miss. 2015).

Appellant's claim that the prosecution did not provide him with his clothes and pictures of the window that he used to access the victim's home was procedurally barred because he did not raise the issue in his motion for post-conviction relief. Stamps v. State, 151 So. 3d 248, 2014 Miss. App. LEXIS 651 (Miss. Ct. App. 2014).

Appellant's claim that there was no factual basis for his guilty plea was procedurally barred because he raised the argument for the fist time on appeal. Stamps v. State, 151 So. 3d 248, 2014 Miss. App. LEXIS 651 (Miss. Ct. App. 2014).

Inmate's post-conviction relief (PCR) motion was a successive writ because he alleged the same issues in a prior PCR motion, and any additional arguments he raised in the motion could have been raised at trial or previously on appeal. Clay v. State, 168 So. 3d 987, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. 2013), cert. dismissed, 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Dismissal of an inmate's fifth post-conviction relief motion against the State was proper because the motion was filed over 25 years beyond the applicable 3-year limitations period, and thus was both time-barred under Miss. Code Ann. § 99-39-5(2), and successive-writ barred under Miss. Code Ann. § 99-39-23(6); the inmate failed to show any exceptions. Contrary to inmate's claim, his life sentence had not "expired," and his reliance on Miss. Code Ann. § 99-39-21 was misplaced. Smith v. State, 118 So. 3d 180, 2013 Miss. App. LEXIS 101 (Miss. Ct. App. 2013).

Court of appeals decision that a fourth post-conviction relief motion was procedurally barred as an impermissible successive writ was in error where the supreme court incorrectly applied the procedural bar to defendant's three earlier applications because defendant's arguments implicated fundamental due-process concerns. Jackson v. State, 2010 Miss. LEXIS 170 (Miss. Apr. 1, 2010).

Inmate's claim in his motion for post-conviction relief that his appellate counsel failed to cite his trial counsel's error in not litigating his claim of an illegal search and seizure of his vehicle was procedurally barred because the inmate failed to raise the claim of illegal search and seizure during the trial and on direct appeal. Lattimore v. State, 37 So. 3d 678, 2010 Miss. App. LEXIS 50 (Miss. Ct. App. 2010).

Because defendant's claims which raised various alleged constitutional violations and challenged his death penalty sentence were either procedurally barred by Miss. Code Ann. § 99-39-21(1) or by res judicata, defendant's application for leave to seek postconviction relief was denied. King v. State, 23 So. 3d 1067, 2009 Miss. LEXIS 449 (Miss. 2009).

Defendant's post-conviction claim of prosecutorial misconduct was procedurally barred by Miss. Code Ann. § 99-39-21(1) because defendant confessed that defense counsel objected at trial, and the objection was sustained and a limiting instruction was given. Thompson v. State, 10 So. 3d 525, 2009 Miss. App. LEXIS 48 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 424 (Miss. 2009).

Trial court properly dismissed defendant's motion for post-conviction relief because defendant was barred by Miss. Code Ann. § 99-39-21(2) from relitigating guilt in the motion for post-conviction relief. Thompson v. State, 10 So. 3d 525, 2009 Miss. App. LEXIS 48 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 424 (Miss. 2009).

While petitioner state death row inmate's argument of a history of racial discrimination in jury selection by the prosecution, was not raised at trial or on direct appeal, and thus could be found as waived under Miss. Code Ann. § 99–39-21(3), out of an abundance of caution, the federal habeas court would analyze the issue on the merits. Stevens v. Epps, 2008 U.S. Dist. LEXIS 69564 (S.D. Miss. Sept. 15, 2008), aff'd, 618 F.3d 489, 2010 U.S. App. LEXIS 18696 (5th Cir. Miss. 2010).

Miss. Code Ann. § 99-39-21(1) barred a prisoner from raising two issues of alleged ineffective assistance of counsel on appeal because he did not include these issues in his petition for post-conviction relief. Wallace v. State, 982 So. 2d 1027, 2008 Miss. App. LEXIS 332 (Miss. Ct. App. 2008).

Inmate was not entitled to post-conviction relief on his claim that execution by lethal injection amounted to an unconstitutional prior restraint of speech because the issue was capable of being raised at trial or on direct appeal and was procedurally barred from further consideration on collateral appeal. Notwithstanding the procedural bar, the claim was without merit, as the inmate provided no sworn testimony or affidavit to support his contention that the lethal-injection protocol would not be effective on him or that it would otherwise be improperly administered. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Inmate's post-conviction claim that execution by lethal injection constituted cruel and unusual punishment was procedurally barred from review on collateral appeal because it was the first time that the inmate had raised the issue and it was capable of being raised on direct appeal. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Defendant argued, for the first time in his appellate brief, that he received ineffective assistance of counsel at the trial court level, and this issue was procedurally barred as it was not raised in his motion below, Miss. Code Ann. § 99-39-21 (1); the trial court did not err in dismissing this matter pursuant to Miss. Code Ann. § 99-39-11 as a petition for post-conviction relief. Ducote v. State, 970 So. 2d 1309, 2007 Miss. App. LEXIS 831 (Miss. Ct. App. 2007).

Defendant's post-conviction claim regarding an aiding and abetting instruction was procedurally barred under Miss. Code Ann. § 99-39-21(1) where it was not brought on direct appeal. Davis v. State, 980 So. 2d 951, 2007 Miss. App. LEXIS 689 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 205 (Miss. 2008).

On the inmate's claim that his execution would be unconstitutional under the Eighth and Fourteenth Amendments because he was mentally retarded, he was entitled to and did not receive an Atkins hearing because the inmate met the requirements of Chase and its progeny; the inmate's claim was not procedurally barred under Miss. Code Ann. § 99-39-21(1) because he could not have raised the claim before the trial court, as the Atkins decision was decided 12 days after the inmate was sentenced to death. Thorson v. State, 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Inmate's claim that execution by lethal injection was cruel and unusual punishment was procedurally barred because he failed to raise it on direct appeal even though he could have done so. Thorson v. State, 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Motion for post-conviction relief was denied in a case where defendant pled guilty to uttering a forgery because a claim that the charge should have been for false pretenses instead was procedurally barred under Miss. Code Ann. § 99-39-21(1) since the issue was not raised in the plea; despite the bar, the issue was meritless because defendant admitted in the plea colloquy that she knowingly created a fictitious name for use on a bank account and presented a check drawn on that account for payment at a retail store. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Where a sentence of 10 years with five years suspended was entered in a case where defendant entered a guilty plea to the charge of uttering a forgery, defendant was unable to challenge the sentence in a motion for post-conviction relief since it was not raised at the time of sentence; at any rate, the issue of disproportionality was meritless because the sentence was within the limits of Miss. Code Ann. § 97-21-33. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

In a resentencing trial in a capital murder case, under the Eighth Amendment defendant was permitted to introduce mitigating evidence; however, he was not permitted to introduce evidence that he was not the victim's killer because that issue was procedurally barred from further consideration under the doctrine of res judicata. King v. State, 960 So. 2d 413, 2007 Miss. LEXIS 317 (Miss. 2007), cert. denied, 552 U.S. 1190, 128 S. Ct. 1223, 170 L. Ed. 2d 77, 2008 U.S. LEXIS 1244 (U.S. 2008).

Although defendant did not raise the issue of ineffective assistance of counsel on direct appeal, his claim was not procedurally barred under Miss. Code Ann. § 99-39-21(1), (3) because he had the same counsel at trial and on appeal and it was unrealistic to think that counsel would have preserved the issue of ineffective assistance as to himself; other claims, however, which could have been raised on direct appeal but were not, were procedurally barred. Lynch v. State, 951 So. 2d 549, 2007 Miss. LEXIS 34 (Miss. 2007).

Denial of the inmate's petition for post-conviction relief pursuant to Miss. Code Ann. §§ 99-39-1 et seq. was appropriate in part because whether he was entitled to a lesser-included offense instruction had been addressed and was barred from further consideration under Miss. Code Ann. § 99-39-21(2). Turner v. State, 953 So. 2d 1063, 2007 Miss. LEXIS 2 (Miss. 2007).

Defendant was procedurally barred from asserting an ineffective assistance of counsel claim because defendant had a clear opportunity to object to what he contended was a lack of investigation and presentation of mitigating evidence during the trial; defendant made no objections at trial, nor during his direct appeal, and defendant did not identify newly discovered evidence, but used evidence he readily admitted was available during trial and direct appeal to support his claim of ineffective assistance. Brown v. State, 948 So. 2d 405, 2006 Miss. LEXIS 635 (Miss. 2006), cert. denied, 552 U.S. 848, 128 S. Ct. 101, 169 L. Ed. 2d 77, 2007 U.S. LEXIS 9682 (U.S. 2007).

Petitioner was denied post-conviction relief from her capital murder conviction; although she argued that her death sentence was disproportionate because her son and the hired killer received lesser sentences, the issue was raised on direct appeal; therefore, petitioner was procedurally barred by res judicata from raising the issue under Miss. Code Ann. § 99-39-21(3). Also, petitioner's claims were found to be meritless. Byrom v. State, 927 So. 2d 709, 2006 Miss. LEXIS 43 (Miss.), cert. denied, 549 U.S. 1056, 127 S. Ct. 662, 166 L. Ed. 2d 520, 2006 U.S. LEXIS 9076 (U.S. 2006).

Inmate's claim that when reading Miss. Code Ann. § 97-5-39(2)(c) in conjunction with Miss. Code Ann. § 97-3-19(2)(f), the result was an automatic implication of a capital crime regardless of how or in what manner the child suffered death, was procedurally barred under Miss. Code Ann. § 99-39-21(1) because it could have been raised on direct appeal and was not; the claim was also without merit because the Mississippi Supreme Court had previously found that upon reading the statutes in conjunction they were constitutional. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

Inmate's claim that the use of the avoiding arrest aggravating factor without a limiting instruction was unconstitutional was procedurally barred under Miss. Code Ann. § 99-39-21(1) because it could have been raised on direct appeal and was not. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

Inmate's claim that the use of the robbery aggravating factor during sentencing was inappropriate as it allowed the use of the underlying felony, which elevated the crime to capital murder, was procedurally barred under Miss. Code Ann. § 99-39-21(1) because it could have been raised on direct appeal and was not. Brawner v. State, 947 So. 2d 254, 2006 Miss. LEXIS 625 (Miss. 2006).

In a death penalty case, defendant waived the issue of the prosecutor's alleged conflict of interest because defendant failed to move for the disqualification of the prosecutor, and he failed to raise the issue on his direct appeal. Scott v. State, 938 So. 2d 1233, 2006 Miss. LEXIS 534 (Miss. 2006), overruled, Lynch v. State, 951 So. 2d 549, 2007 Miss. LEXIS 34 (Miss. 2007).

Post-conviction relief was denied because defendant's assertion that he received ineffective assistance of counsel during the sentencing phase of a capital murder trial was procedurally barred; however, even if it was not, ineffectiveness was not shown because, despite mitigation evidence that defendant was a great person and had not been violent, the state could have presented evidence of his prior convictions. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied based on the qualifications of an expert who took dental molds in a capital case because the issue was procedurally barred since it could have been raised at trial or on direct appeal; even if it was not, defendant did not contend that improper methods were used in creating the molds, that the expert was not qualified, or that the molds were not an accurate replica. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied in a capital murder case on the issue of whether a circuit court erred by using the aggravating circumstance of "especially heinous, atrocious, or cruel" based on a sufficiency of the evidence; even if it was not barred, the issue was without merit since the victim was beaten, strangled, raped, stabbed, and left to die as her home was set on fire. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied on the issue of whether defendant's death sentence was unconstitutionally excessive in capital murder case based on the fact that it was felony murder because the issue was procedurally barred; even if it was not, the issue was meritless since this argument had been previously rejected, and the jury found all four factors under Miss. Code Ann. § 99-19-101. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied in a capital murder case based on the argument that the use of the "avoiding or preventing a lawful arrest or effecting an escape from custody" aggravator was inappropriate was denied because it was procedurally barred; even if it was not, the argument was meritless since sufficient evidence supported this due to the fact that the victim's telephone line was cut, two fires were set in her home, and defendant had just been released from prison. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied in a capital murder case based on the assertion that an expert's testimony was not reliable or relevant due to not being grounded in the methods and procedures of science because the issue was procedurally barred since it was considered and rejected on direct appeal. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Post-conviction relief was denied in a capital murder case because the issue of whether defendant was denied a fair trial based on alleged falsehoods and misrepresentations by an expert was procedurally barred since it was capable of being raised on direct appeal; even if it was not, it was not reasonably likely that the statements affected the judgment of the jury, even if they were false, because ample evidence was presented regarding the expert's credibility or lack thereof. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Defendant's request for post-conviction relief was denied on the basis of ineffective assistance of counsel due to an alleged failure to investigate in general because that issue was procedurally barred; however, there was no ineffectiveness based on an alleged failure to investigate during the guilt phase of a capital murder trial since counsel would not have been able to determine that testimony would have been perjury, defendant did not have an alibi defense, and decisions regarding the examination of an expert were trial strategy where there was no showing that the expert was not qualified. Howard v. State, 945 So. 2d 326, 2006 Miss. LEXIS 531 (Miss. 2006), cert. denied, 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278 (U.S. 2007).

Court denied petitioner's request for post-conviction relief from her conviction for capital murder based on her claim that she was improperly informed of the trial judge's sentencing options when she was deciding to waive a jury determination of her sentence and to place the decision in the hands of the trial judge because petitioner did not raise the issue on direct appeal and was procedurally barred under Miss. Code Ann. § 99-39-21(1), and she failed to show cause and actual prejudice by being informed that the trial judge had "three sentencing options" under the capital sentencing statute, Miss. Code Ann. § 99-19-101(1), in that it could have sentenced her to death, life imprisonment without eligibility for parole, or life imprisonment. In reality, the trial court had only two sentencing options, death or life imprisonment without parole eligibility, because the parole statute, Miss. Code Ann. § 47-7-3(1)(f), denies parole eligibility to any person charged, tried, convicted, and sentenced to life imprisonment under the provisions of Miss. Code Ann. § 99-19-101. Byrom v. State, 927 So. 2d 709, 2006 Miss. LEXIS 43 (Miss.), cert. denied, 549 U.S. 1056, 127 S. Ct. 662, 166 L. Ed. 2d 520, 2006 U.S. LEXIS 9076 (U.S. 2006).

Where the same judge presided over appellant's first and second motion for post-conviction relief, appellant's claim that the judge should have recused himself was not raised below, and therefore could not be raised in the post-conviction appeal under Miss Code Ann. § 99-39-21(1). Hudson v. State, 932 So. 2d 842, 2005 Miss. App. LEXIS 864 (Miss. Ct. App. 2005), cert. denied, 933 So. 2d 303, 2006 Miss. LEXIS 509 (Miss. 2006).

Where an inmate failed to raise his claim that the trial court failed to inform him of the maximum sentence allowed by law before accepting his plea of guilt to accessory after the fact to murder in the trial court, under Miss. Code Ann. § 99-39-21, the claim was procedurally barred from being brought for the first time on appeal. Fuller v. State, 914 So. 2d 1230, 2005 Miss. App. LEXIS 858 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief was proper pursuant to Miss. Code Ann. § 99-39-21(1) where his argument that the judge should not have presided over the revocation hearing was not preserved for review because he did not raise the issue at the revocation proceeding. In addition, it was without merit because the judge was exercising his authority under Miss. Code Ann. § 47-7-37 to issue a warrant for the inmate's arrest for a probation violation; thus, he was acting within his statutory authority and there was no indication that he was unqualified or biased. Hubbard v. State, 919 So. 2d 1022, 2005 Miss. App. LEXIS 462 (Miss. Ct. App. 2005).

Denial of the inmate's post-conviction motion to vacate an illegal sentence was proper pursuant to Miss. Code Ann. 99-39-23(6) where he did not raise the issue of an illegal sentence in his first petition for post-conviction relief but could have. Thus, the issue was barred by Miss. Code Ann. § 99-39-21(1). Bradley v. State, 919 So. 2d 1062, 2005 Miss. App. LEXIS 467 (Miss. Ct. App. 2005).

Defendant's "letter of hope" to the trial judge did not constitute a first motion for post-conviction relief, in part, because it was never answered or denied. Nevertheless, the trial court's other grounds for denying defendant's motion were valid, since defendant's request for a reduction in his sentence could have been brought before the trial court at trial or on direct appeal, and therefore he waived the issue; secondly, the trial judge reviewed the record, found that defendant had openly admitted his guilt at the plea proceeding, and found that his motion was meritless as defendant had made the strategic gamble of refusing the more lenient plea agreement that had been offered. Spencer v. State, 907 So. 2d 353, 2004 Miss. App. LEXIS 1077 (Miss. Ct. App. 2004), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 445 (Miss. 2005).

Issue of whether a police officer was properly qualified to express an opinion regarding the blood spatter evidence found at a murder scene was twice litigated before and affirmed by the Supreme Court of Mississippi; therefore, the issue had already been litigated and was procedurally barred when the defendant again brought the issue before the court for a third time in a petition for post-conviction relief; that defendant was attempting to rephrase the issue as a knowing presentation of false or misleading evidence by the State of Mississippi did not change the underlying claim, which was the same one that had already been addressed and found to have no merit. Jordan v. State, 912 So. 2d 800, 2005 Miss. LEXIS 170 (Miss. 2005).

Defendant's claim that it was a violation of the law of the case doctrine and the doctrines of collateral and equitable estoppel to allow the State of Mississippi to present evidence that the victim was killed execution-style was procedurally barred by Miss. Code Ann. § 99-39-21 because no objection was raised by defendant at trial or on previous appeal on defendant's claim; furthermore, defendant could have and yet failed to raise this issue in previous post-conviction pleadings, Jordan v. State, 912 So. 2d 800, 2005 Miss. LEXIS 170 (Miss. 2005).

Defendant's claim in a post-conviction proceeding of ineffective assistance of counsel regarding a mental evaluation of defendant was procedurally barred because the Supreme Court of Mississippi had already addressed similar issues related to the mental evaluation in its most recent opinion concerning defendant. Jordan v. State, 912 So. 2d 800, 2005 Miss. LEXIS 170 (Miss. 2005).

Inmate did not raise any proportionality of his sentence argument on direct appeal; rather, the Supreme Court considered the issue on its own because of the requirement of Miss. Code Ann. § 99-19-105(3). Thus, the inmate's argument in his petition for post-conviction relief was procedurally barred under Miss. Code Ann. § 99-39-21(1) because it was not raised on direct appeal. Knox v. State, 901 So. 2d 1257, 2005 Miss. LEXIS 190 (Miss.), cert. denied, 546 U.S. 1063, 126 S. Ct. 797, 163 L. Ed. 2d 630, 2005 U.S. LEXIS 9080 (U.S. 2005).

Death-sentenced Mississippi inmate was not entitled to federal habeas relief under 28 U.S.C.S. § 2254 following his murder for hire conviction; his U.S. Const. amend. VI ineffective assistance claim was procedurally barred by Miss. Code Ann. § 99-39-21 because he employed different counsel on direct appeal and failed to raise the claim. Alternatively, the inmate's claim failed on the merits because there were no deficiencies in counsel's trial strategy; further, juxtaposing the inmate's scant potential mitigating evidence alongside the calculated, vicious nature of his crime indicated the inmate did not demonstrate a reasonable probability that the outcome of the sentencing phase would have been different but for counsel's purported deficient performance. Nixon v. Epps, 405 F.3d 318, 2005 U.S. App. LEXIS 5219 (5th Cir. Miss.), cert. denied, 546 U.S. 1016, 126 S. Ct. 650, 163 L. Ed. 2d 528, 2005 U.S. LEXIS 8406 (U.S. 2005).

Defendant argued that his guilty plea was involuntary due to the trial court's failure to advise him of the elements of the crimes to which he pled guilty. This issue was procedurally barred because defendant did not raise it at the time he was sentenced; therefore, he waived its consideration on a motion for postconviction relief. Gaddis v. State, 904 So. 2d 1197, 2004 Miss. App. LEXIS 1028 (Miss. Ct. App. 2004).

Where issues were addressed during trial and procedurally barred from being raised in an application for postconviction relief under Miss. Code Ann. § 99-39-21(3), an inmate could not recast the issues under the guise of ineffective assistance of counsel. Hughes v. State, 892 So. 2d 203, 2004 Miss. LEXIS 1355 (Miss. 2004), cert. denied, 545 U.S. 1130, 125 S. Ct. 2935, 162 L. Ed. 2d 870, 2005 U.S. LEXIS 4906 (U.S. 2005).

Where the issue of venue was raised at trial and affirmed on direct appeal, it was procedurally barred from further consideration on collateral review under Miss. Code Ann. § 99-39-21(3) Hughes v. State, 892 So. 2d 203, 2004 Miss. LEXIS 1355 (Miss. 2004), cert. denied, 545 U.S. 1130, 125 S. Ct. 2935, 162 L. Ed. 2d 870, 2005 U.S. LEXIS 4906 (U.S. 2005).

Petitioner's claims concerning the testimony of his cell mates who testified that he admitted having murdered the victim, and the issue of the admissibility of DNA evidence, were raised and rejected on direct appeal; those issues having been previously raised and rejected were procedurally barred by the doctrine of res judicata in his action for postconviction relief in the trial court. Gray v. State, 887 So. 2d 158, 2004 Miss. LEXIS 1166 (Miss. 2004), cert. denied, 545 U.S. 1130, 125 S. Ct. 2935, 162 L. Ed. 2d 870, 2005 U.S. LEXIS 4905 (U.S. 2005).

Appellant's claim that her emotional state at the time she committed arson warranted a plea of not guilty by reason of temporary insanity because the crime was a crime of passion was procedurally barred under Miss. Code Ann. § 99-39-21(1) because appellant failed to raise the defense when she pled guilty. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

All of the claims raised in petitioner's second petition for postconviction relief other than his ineffective assistance of counsel claims, including a claim that there was no waiver of formal indictments and a claim challenging the validity of his guilty plea, were barred by Miss. Code Ann. § 99-39-21(1) (Supp.) because the claims should have been raised before petitioner pled guilty and petitioner showed no evidence of cause and actual prejudice. Pinson v. State, 881 So. 2d 348, 2004 Miss. App. LEXIS 860 (Miss. Ct. App. 2004).

State Supreme Court rejected defendant's claim that he was deprived of his right to a fair trial because some jurors saw him shackled, as the issue was not raised by defendant on his direct appeal.

Doss v. State, 882 So. 2d 176, 2004 Miss. LEXIS 847 (Miss. 2004), cert. denied, 544 U.S. 1062, 125 S. Ct. 2513, 161 L. Ed. 2d 1113, 2005 U.S. LEXIS 4399 (U.S. 2005).

Prisoner's claim that a 911 tape was erroneously admitted into evidence at his murder trial was procedurally barred under Miss. Code Ann. § 99-39-21(1) because this issue was capital for determination at trial or on direct appeal. Bishop v. State, 882 So. 2d 135, 2004 Miss. LEXIS 773 (Miss. 2004), cert. denied, 543 U.S. 1189, 125 S. Ct. 1401, 161 L. Ed. 2d 194, 2005 U.S. LEXIS 2123 (U.S. 2005).

Where the issue of whether imposition of the death penalty on defendant for his crime was excessive or disproportionate was decided against defendant on direct appeal; the claim was procedurally barred and could not be relitigated in defendant's postconviction petition for relief under Miss. Code Ann. § 99-39-21(3); further, it had previously been determined that the death penalty for one who committed felony murder did not violate defendant's rights under U.S. Const. amend. VIII. Grayson v. State, 879 So. 2d 1008, 2004 Miss. LEXIS 721 (Miss. 2004), cert. denied, 543 U.S. 1155, 125 S. Ct. 1301, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1593 (U.S. 2005).

Denial of the inmate's petition for post-conviction relief under Miss. Code Ann. § 13-5-1 was proper where the issue was procedurally barred from being raised for the first time in that petition; further, inmate's contention was without merit because the record indicated that the inmate had affirmed the juror's presence after fully exploring her abilities to read, write, and comprehend English. Puckett v. State, 879 So. 2d 920, 2004 Miss. LEXIS 592 (Miss. 2004), cert. denied, 544 U.S. 924, 125 S. Ct. 1638, 161 L. Ed. 2d 483, 2005 U.S. LEXIS 2506 (U.S. 2005).

In a capital murder case, when defendant asserted, on post-conviction relief, that his counsel had provided ineffective assistance of counsel, his claims were procedurally barred because they were either unsuccessfully argued on direct appeal of his conviction or could have been raised on direct appeal and were not. Manning v. State, 903 So. 2d 29, 2004 Miss. LEXIS 587 (Miss. 2004).

Direct claim that an inmate was improperly shackled at trial could have been raised at the trial and again on direct appeal; thus, that claim was procedurally barred under Miss. Code Ann. § 99-39-21(2). Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

There was no merit in the allegation that the jury failed to consider an inmate's conviction and sentence for capital murder separately from co-defendant's; the court first noted that the issue was raised on direct appeal and was therefore barred pursuant to Miss. Code Ann. § 99-39-21(2), and in any event, the jury returned individualized verdicts and the evidence showed that the jury considered the inmate separately. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Issue raised at trial and on direct appeal from an inmate's capital murder conviction concerning the exclusion of a juror for failing to meet the qualifications of Miss. Code Ann. § 13-5-1 was found to be without merit, and the issue was therefore barred pursuant to Miss. Code Ann. § 99-39-21(2); because the trial court committed no error in excusing this juror and another juror for not meeting the qualifications under Miss. Code Ann. § 13-5-1, then the attorneys were not ineffective for failing to object to the jurors' dismissal, and in any event, the attorneys' decisions regarding the final composition of the jury were generally determined to be matters of trial strategy. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate's attorney was not ineffective, in connection with the inmate's capital murder trial, for allowing the inmate to be tried jointly with co-defendant at both the guilt and penalty phases because (1) this issue was substantially addressed on direct appeal, and thus was barred in post-conviction proceedings under Miss. Code Ann. § 99-39-21(2), and (2) in any event, the issue was without merit because the inmate and co-defendant insisted on being tried together. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate's attorneys were not ineffective, in connection with the inmate's capital murder trial, for failing to object to certain prosecutorial statements made during closing argument at the guilt phase because (1) the issue was raised on direct appeal and was found to be without merit, and thus the issue was barred under Miss. Code Ann. § 99-39-21(2), and (2) in any event, the comments made were within the wide latitude granted in an attorney's closing argument. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Trial judge did not erroneously instruct the jury in the inmate's capital murder trial that death could be imposed if aggravating and mitigating circumstances were of equal weight because (1) the issue was addressed on direct appeal and found to be without merit, and thus the issue was barred under Miss. Code Ann. § 99-39-21(2), and (2) it also failed under case law. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate's claim concerning error on a verdict form in connection with the inmate's capital murder trial was found to be without merit on direct appeal, and thus the issue was barred under Miss. Code Ann. § 99-39-21(2), and (2) in any event, the inmate raised nothing new before the court. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate's attorneys were not ineffective, in connection with the inmate's capital murder trial, for not requesting an amendment to sentencing instructions because (1) the issue was raised on direct appeal and was found to be without merit, and thus the issue was barred under Miss. Code Ann. § 99-39-21(2), and (2) in any event, there was no showing of deficient performance. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate's cumulative effect argument in connection with the inmate's capital murder trial was procedurally barred under Miss. Code Ann. § 99-39-21(3) as res judicata, and in any event, the issue was without merit because the cumulative errors, in any, did not require relief. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Inmate could not raise in his petition for postconviction relief that his trial counsel was ineffective for failing to object to certain jury instructions as the Supreme Court of Mississippi had already decided on the inmate's direct appeal that the instructions did not incorrectly state the law; thus, the argument was procedurally barred. Bell v. State, 879 So. 2d 423, 2004 Miss. LEXIS 543 (Miss. 2004), cert. denied, 543 U.S. 1155, 125 S. Ct. 1301, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1594 (U.S. 2005).

In his petition for post-conviction relief, the inmate argued that a witness's testimony was false and that the State knowingly presented false evidence because, although the witness stated that from the apartment he shared with his girlfriend he saw defendant force his way into the victims' apartment, he did not live in the apartment across the street from the victims at the time they were murdered. Because neither the inmate nor his attorneys were aware of any of the issues at trial, the inmate alleged such facts as demonstrated that his claims were not procedurally barred under Miss. Code Ann. § 99-39-21(1); thus, the Supreme Court granted his petition to seek post-conviction relief as to that issue. Manning v. State, 884 So. 2d 717, 2004 Miss. LEXIS 469 (Miss. 2004).

It had long been established that a jury could not be instructed to disregard sympathy in toto in a capital case; because the inmate failed to object at trial and failed in his post-conviction relief petition to demonstrate that he was prejudiced by the district attorney's remarks to the jury regarding sympathy, the inmate was procedurally barred from raising that issue under Miss. Code Ann. § 99-39-21(1). Manning v. State, 884 So. 2d 717, 2004 Miss. LEXIS 469 (Miss. 2004).

Inmate's request for leave to file an application for post-conviction relief after the death sentence was imposed for rape and murder was denied because many of the inmate's claims were procedurally barred; claims involving an alleged taint to the jury pool, the cumulative effect of failure to object to prosecutorial comments, residual doubt, the vague nature of a pathologist's testimony, voir dire of prospective jurors concerning mitigation evidence, a limiting instruction on a statutory aggravating factor, the proportionality of the sentence, the sufficiency of the evidence, and a request for a neurological examination had all been previously litigated. Holland v. State, 878 So. 2d 1, 2004 Miss. LEXIS 413 (Miss. 2004), cert. denied, 544 U.S. 906, 125 S. Ct. 1590, 161 L. Ed. 2d 280, 2005 U.S. LEXIS 2273 (U.S. 2005).

Complaints raised by the inmate directly relating to the manner in which he was sentenced all existed immediately at the conclusion of the sentencing hearing and were, thus, appropriate matters for a direct appeal pursuant to Miss. Code Ann. § 99-39-3(2) of the Mississippi Uniform Post-Conviction Collateral Relief Act (Act); because the inmate did not take a direct appeal, those issues were barred from consideration in a post-conviction relief proceeding pursuant to Miss. Code Ann. § 99-39-21(1) of the Act. Swindle v. State, 881 So. 2d 281, 2003 Miss. App. LEXIS 1062 (Miss. Ct. App. 2003), rev'd, 881 So. 2d 174, 2004 Miss. LEXIS 713 (Miss. 2004).

Issues that were either presented through direct appeal or could have been presented on direct appeal or at trial are procedurally barred and cannot be relitigated under the guise of poor representation by counsel. Wilcher v. State, 863 So. 2d 719, 2003 Miss. LEXIS 526 (Miss. 2003), cert. denied, 542 U.S. 942, 124 S. Ct. 2917, 159 L. Ed. 2d 821, 2004 U.S. LEXIS 4678 (U.S. 2004).

In a post-conviction proceeding, an inmate was procedurally barred from arguing ineffective assistance of trial counsel because the inmate had a meaningful opportunity on direct appeal to claim the trial counsel had erred where the inmate, convicted for burglary of a dwelling, had burglarized a vacant house belonging to a nursing home resident, which, inmate claimed, was not a "dwelling," a claim without merit given the intent to maintain the house for dwelling purposes. Sheffield v. State, 881 So. 2d 249, 2003 Miss. App. LEXIS 998 (Miss. Ct. App. 2003), cert. dismissed, 2005 Miss. LEXIS 87 (Miss. Feb. 3, 2005).

State failed to meet the burden for imposing a procedural bar on a petitioner's Brady violation claim where it was uncertain whether the petitioner had knowledge during his trial of a police officer's undisclosed testimony in another trial, thus making the issue capable of review on direct appeal. Simon v. State, 857 So. 2d 668, 2003 Miss. LEXIS 447 (Miss. 2003), cert. denied, 541 U.S. 977, 124 S. Ct. 1885, 158 L. Ed. 2d 475, 2004 U.S. LEXIS 2641 (U.S. 2004).

Double jeopardy issue was procedurally barred where a jury was deadlocked on the issue of the death penalty as to the murder of one victim but the death penalty was imposed after a second trial as to three other victims. Simon v. State, 857 So. 2d 668, 2003 Miss. LEXIS 447 (Miss. 2003), cert. denied, 541 U.S. 977, 124 S. Ct. 1885, 158 L. Ed. 2d 475, 2004 U.S. LEXIS 2641 (U.S. 2004).

In a capital murder case, defendant's claim that the trial court erred in granting a jury instruction was barred pursuant to Miss. Code Ann. § 99-39-21(2) because arguing different theories on post-conviction review were barred absent a showing of cause and actual prejudice. Walker v. State, 863 So. 2d 1, 2003 Miss. LEXIS 534 (Miss. 2003), cert. denied, 543 U.S. 842, 125 S. Ct. 281, 160 L. Ed. 2d 68, 2004 U.S. LEXIS 5982 (U.S. 2004).

Petitioner's argument that his five year sentence of probation was illegal was not raised at the time he was sentenced; as such, he waived consideration of the claim on a motion for post-conviction relief or on appeal from the denial therefrom. Payton v. State, 845 So. 2d 713, 2003 Miss. App. LEXIS 398 (Miss. Ct. App.), cert. denied, 859 So. 2d 392, 2003 Miss. LEXIS 436 (Miss. 2003), cert. denied, 540 U.S. 1078, 124 S. Ct. 931, 157 L. Ed. 2d 751, 2003 U.S. LEXIS 9076 (U.S. 2003).

Where each of defendant's direct complaints regarding the manner in which he was sentenced could and should have been the subject of a direct appeal, where defendant failed to take such an appeal, those issues were barred from consideration in a post-conviction relief proceeding; nevertheless, different considerations arose when those same complaints in regard to defendant's sentencing were viewed in light of his additional complaint that he was denied effective representation of counsel, at least during the sentencing phase of the circuit court proceedings. Swindle v. State, 881 So. 2d 281, 2003 Miss. App. LEXIS 1062 (Miss. Ct.

App. 2003), rev'd, 881 So. 2d 174, 2004 Miss. LEXIS 713 (Miss. 2004).

Where a petitioner failed to object to jury instructions both during trial and on appeal, his claim of error was barred by Miss. Code Ann. § 99-39-21(1), and since he did not show actual prejudice, his failure constituted a waiver and he was procedurally barred from raising this issue. Woodward v. State, 843 So. 2d 1, 2003 Miss. LEXIS 92 (Miss. 2003).

Petitioner's claims in his post-conviction petition that he was denied a fair trial because he was allegedly seen in shackles by the jurors, and that a jury instruction was improper, were not raised at trial or on direct appeal and were therefore procedurally barred from collateral review pursuant to Miss. Code Ann. § 99-39-21(1). McGilberry v. State, 843 So. 2d 21, 2003 Miss. LEXIS 93 (Miss. 2003).

Defendant's motion was procedurally barred where his failure to raise a claim either at trial or on direct appeal was a procedural bar to the consideration of that claim. Hires v. State, 856 So. 2d 438, 2003 Miss. App. LEXIS 296 (Miss. Ct. App. 2003), aff'd, in part, 2004 Miss. LEXIS 695 (Miss. June 17, 2004).

In a case where the defendant did not object at sentencing concerning an alleged disparity among the sentences given to his co-conspirators, the issue was procedurally barred for purposes of an appeal. Collins v. State, 822 So. 2d 364, 2002 Miss. App. LEXIS 405 (Miss. Ct. App. 2002).

In a post-conviction relief case, appellant's claim that he was denied due process because he was never arraigned and his right to a speedy trial was violated failed; the record appellant submitted on appeal contained no evidence of whether appellant was arraigned or when, or the number of days he waited after arrest for the plea hearing. Brooks v. State, 832 So. 2d 607, 2002 Miss. App. LEXIS 855 (Miss. Ct. App. 2002).

The defendant was procedurally barred from raising a claim that he was denied due process of the law based on each count in the bill of information ending with the words "against the peace and dignity of the State", as he had failed to raise the issue for a decision before the lower court. McCullen v. State, 786 So. 2d 1069, 2001 Miss. App. LEXIS 198 (Miss. Ct. App. 2001).

The doctrines of "different state or federal legal theories" and res judicata did not bar the claim that the trial court committed fundamental error by failing to instruct the jury on the elements of robbery in a prosecution for capital murder while engaged in the commission of the crime of robbery since the defendant demonstrated actual prejudice to overcome such procedural bar on the basis of prior cases which called for automatic reversal. Ballenger v. State, 761 So. 2d 214, 2000 Miss. LEXIS 157 (Miss. 2000).

The defendant was procedurally barred from asserting a claim based on ineffective assistance of counsel where it was not first alleged on appeal to the trial court. Walton v. State, 752 So. 2d 452, 1999 Miss. App. LEXIS 692 (Miss. Ct. App. 1999).

Because the issue could have been, but was not, raised at the time of the plea and sentencing, the defendant was procedurally barred from arguing that the trial court erred in sentencing him to serve four concurrent 10 year sentences for four counts of armed robberies to which he pled guilty, while his co-defendant only received six years for one count of armed robbery, to which he as well pled guilty. Henley v. State, 749 So. 2d 246, 1999 Miss. App. LEXIS 547 (Miss. Ct. App. 1999).

The defendant was procedurally barred from arguing that his convictions on four armed robbery counts violated double jeopardy where he was presented with the opportunity to raise any objections, defenses, claims, questions, issues, or errors in either fact or law at his plea and sentencing, but chose not to do so. Henley v. State, 749 So. 2d 246, 1999 Miss. App. LEXIS 547 (Miss. Ct. App. 1999).

Where the defendant failed to raise the issue of his status as a habitual offender during his plea colloquy, he was procedurally barred from making such claim under subsection (1). Tobias v. State, 724 So. 2d 972, 1998 Miss. App. LEXIS 1050 (Miss. Ct. App. 1998).

Habeas petitioner failed to show that state statute providing for procedural bar to raising constitutional claims that were not raised at trial or on direct appeal was not strictly or regularly applied by state, and statute thus precluded federal habeas review of petitioner's claims that were barred under that statute. Stokes v. Anderson, 123 F.3d 858, 1997 U.S. App. LEXIS 28557 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1134, 118 S. Ct. 1091, 140 L. Ed. 2d 147, 1998 U.S. LEXIS 1232 (U.S. 1998).

State statute providing that state supreme court was to deny application to proceed on motion for postconviction relief, unless it appeared from face of application, motion, exhibits, exhibits and prior record that postconviction claims were not procedurally barred under separate statute and that they further presented substantial showing of denial of state or federal right, could not operate as procedural bar to federal habeas review, because it required some evaluation of merits of applicant's claims and was not separate from merits of habeas claim. Stokes v. Anderson, 123 F.3d 858, 1997 U.S. App. LEXIS 28557 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1134, 118 S. Ct. 1091, 140 L. Ed. 2d 147, 1998 U.S. LEXIS 1232 (U.S. 1998).

Habeas petitioner's assertion that it was error of state law for manslaughter instruction not to be given in capital murder case was procedurally barred from review by federal district court where issue was not presented until defendant's appeal of denial of second motion for postconviction relief and state Supreme Court determined issue was procedurally barred by failure to raise it previously and by three-year time bar in state Uniform Post-Conviction Collateral Relief Act; furthermore, any error was state law error and did not result in federal constitutional violation, and defendant failed to demonstrate sufficient reason for failure to present claim to state courts in procedurally proper manner. Lockett v. Puckett, 980 F. Supp. 201, 1997 U.S. Dist. LEXIS 16218 (S.D. Miss. 1997).

All issues presented by defendant in motion for postconviction relief were procedurally barred, where she failed to raise them when she confessed to state's petition to adjudicate guilt, when she was sentenced, or during appearances before trial court on petition to reconsider sentence. Jennings v. State, 700 So. 2d 1326, 1997 Miss. LEXIS 459 (Miss. 1997), overruled in part, Rowland v. State, 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

Statement by Mississippi Supreme Court that inmate's habeas claims were barred by state Uniform Postconviction Collateral Relief Act and failed to present substantial showing of denial of state or federal right was plain statement that state's review of claim was procedurally barred, as required for district court to deny federal habeas review based on state procedural ground. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

Under Mississippi law, failure to raise ineffective assistance of counsel claim on direct review does not constitute procedural bar where litigant was represented by same counsel at trial and on direct appeal. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

Habeas corpus petitioner failed to demonstrate that Mississippi's direct appeal bar was not strictly and directly applied near time of petitioner's direct appeal to cases involving speedy trial claims direct appeal raised for first time on collateral review, as required to render bar inadequate as procedural bar. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

Habeas corpus petitioner failed to show cause for procedural default of his speedy trial claim, where he failed to demonstrate any objective external factor that impeded his counsel's ability to raise speedy trial challenge on direct appeal, and he failed to allege that his counsel's failure to raise challenge was product of ineffective assistance of counsel. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

To establish "cause" for procedural default, party is required to show that some objective external factor impeded defense counsel's ability to comply with state's procedural rules or to show prior determination of ineffective assistance of counsel. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

Post-Conviction Collateral Relief Act provides procedure limited in nature to review those matters which, in practical reality, could not or should not have been raised at trial or on direct appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in postconviction relief statute are applicable in death penalty postconviction relief application. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Other issues which were either presented through direct appeal or could have been presented on direct appeal or at trial are procedurally barred on postconviction relief motion and cannot be relitigated under guise of poor representation by counsel. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant was procedurally barred by res judicata from raising in application for postconviction collateral relief issue of whether defendant's proposed instruction as to manslaughter was improperly denied, as issue should have been raised on direct appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant was procedurally barred by res judicata from raising in application for postconviction collateral relief issue, which was raised or should have been raised at trial or in direct appeal, as to whether defense counsel's failure to object to aggravating circumstances at penalty phase constituted ineffective assistance of counsel; procedural bar applied to aggravating circumstances, which did not get special treatment. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant was procedurally barred by res judicata from raising in application for postconviction collateral relief contention that, under totality of the circumstances, defense counsel provided ineffective assistance of counsel in failing to properly preserve claims in trial court of numerous issues of judicial and prosecutorial misconduct, as Supreme Court had addressed on direct appeal allegation that cumulative error required reversal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Postconviction movant was procedurally barred from raising issue as to propriety of prospective application of Willie case, holding that jury could not be instructed on both robbery and pecuniary gain as separate aggravating circumstances in murder prosecution, where movant had argued on direct appeal that pecuniary gain aggravator was vague and overbroad and therefore should not have been submitted as separate aggravator. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

Where defendant had meaningful opportunity to raise issue of ineffective trial counsel on direct appeal and showed neither cause nor actual prejudice, he was procedurally barred by waiver from asserting it through petition for postconviction relief. Moore v. State, 676 So. 2d 244, 1996 Miss. LEXIS 328 (Miss. 1996).

Although Supreme Court need not look further after finding procedural bar, Court may, alternatively, review merits of underlying claim knowing that any subsequent review will stand on the bar alone. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

In capital case, Supreme Court would apply procedural bar to each issue waived by defendant but would, alternatively, address each of those issues on the merits. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Claim of error in submission of aggravating circumstance that capital offense was committed while defendant was engaged in the commission of sexual battery was waived, despite defendant's claim that it could not be procedurally barred because the Supreme Court has refused to apply the bar to aggravating circumstances and that the Court has a statutory obligation to consider possible sentencing errors not raised by defendant or objected to at trial. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Postconviction relief is not granted upon facts and issues which could or should have been litigated at trial or on appeal. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in postconviction relief statute are applicable in death penalty postconvicton relief applications. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Doctrines of res judicata and waiver barred capital murder defendant's postconviction claims that his alleged mental retardation prevented him from giving free and voluntary confession and from understanding his Miranda rights, where only issue raised on direct appeal concerning defendant's confession was whether he was effectively prevented from making jury arguments about confession's credibility, and it was clear that defendant's low intelligence level was considered during suppression hearing in determining voluntariness of his confession. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Habeas corpus petitioner's claim of ineffective assistance of counsel at trial and on appeal, raised for first time in his second federal habeas petition, is procedurally barred by this section, as all claims for ineffective assistance of counsel originated from trial record and could have been discerned solely from examination of trial transcript. Evans v. Thigpen, 683 F. Supp. 1079, 1987 U.S. Dist. LEXIS 13311 (S.D. Miss. 1987).

Claims raised by petition for post conviction relief, which were procedurally barred because they could have been determined at trial or on direct appeal, were: conviction and sentence premised on unconstitutional statutes, double jeopardy, presentation of incompetent testimony, deprivation of defendant's right to testify in his own behalf, exclusion of exculpatory evidence, failure to grant change of venue, judicial misconduct, and unreliable identification. Mann v. State, 490 So. 2d 910, 1986 Miss. LEXIS 2506 (Miss. 1986), overruled in part, Rowland v. State, 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

4. Exclusion of blacks from jury.

Failure of habeas corpus petitioner to raise claim concerning exclusion of blacks from jury by prosecutor at sentencing trial, or on appeal or on first state postconviction collateral relief request waived such claim and is procedurally barred from raising such claim in subsequent appeals, as petitioner did not show sufficient "cause" for failing to raise this claim earlier even though petitioner had knowledge of peremptory strikes and knowledge of what it took to establish violation at time of trial and on appeal, despite petitioner's allegations that he did not have knowledge of prosecutor's systematic exclusion of blacks until article appeared in newspaper and until deposition for another trial was given by district attorney. Evans v. Thigpen, 683 F. Supp. 1079, 1987 U.S. Dist. LEXIS 13311 (S.D. Miss. 1987).

Prisoner did not show sufficient "cause" for failure to object to exclusion of blacks at sentencing trial, where prisoner had knowledge of peremptory strikes and knowledge of what it took to preserve objection at time of trial and on appeal. Evans v. Thigpen, 683 F. Supp. 1079, 1987 U.S. Dist. LEXIS 13311 (S.D. Miss. 1987).

A petitioner seeking to vacate or set aside his judgment of conviction and sentence of death could not successfully raise for the first time the issue of exclusion of blacks from the jury where more than 4 years had elapsed since the date the guilty plead had been entered, the sentencing jury impaneled, and the death sentence imposed, and, in the interim, at least 3 different sets of counsel had worked on the case. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L.

Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

5. Collateral estoppel.

A final decision of an issue on its merits is normally preclusive only if there is identity of parties from one suit to the next, and of their capacities as well; but privity, or a relationship similar to privity, is still required to obtain preclusive effect of collateral estoppel. American Casualty Co. v. United Southern Bank, 950 F.2d 250, 1992 U.S. App. LEXIS 131 (5th Cir. Miss. 1992).

Collateral estoppel binds those who have already had their day in court regarding particular issue. Any other application of it would result in denial of due process for those who were neither party nor privy to prior action. American Casualty Co. v. United Southern Bank, 950 F.2d 250, 1992 U.S. App. LEXIS 131 (5th Cir. Miss. 1992).

On basis of record in particular case, determination of whether insurance company was in privity, or in relationship similar to privity, with party to earlier state action would be too tenuous to support summary judgment, and genuine issues of material fact existed to be tried. American Casualty Co. v. United Southern Bank, 950 F.2d 250, 1992 U.S. App. LEXIS 131 (5th Cir. Miss. 1992).

6. Res judicata.

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

Petitioner's claim that the State failed to prove aggravated assault beyond a reasonable doubt was barred by the doctrine of res judicata because that issue was raised and decided on direct appeal. Page v. State, — So. 3d —, 2019 Miss. LEXIS 109 (Miss. Mar. 12, 2019).

Petitioner's challenge to the constitutionality of Mississippi's death-penalty statute either is barred by the doctrine of res judicata because he challenged the constitutionality of Mississippi's capital-sentencing scheme on direct appeal. 2019 Miss. LEXIS 29.

Petitioner's challenge to the disproportionality of his sentence was barred by the doctrine of res judicata because on direct appeal, the court rejected not only rejected petitioner's disproportionality argument, but also the argument that it should review cases where death has been imposed to cases where death is sought, but not imposed. 2019 Miss. LEXIS 29.

Petitioner's postconviction relief motion was barred by the doctrine of res judicata where the trial court previously found that he was properly sentenced as a habitual offender, when it denied his 2011 PCR motion to vacate his conviction and sentence as a habitual offender under Miss. Code Ann. § 99-19-81, and the Court of Appeals of Mississippi further confirmed that issue by affirming the decision. Wallace v. State, 180 So. 3d 767, 2015 Miss. App. LEXIS 607 (Miss. Ct. App. 2015).

Res judicata did not bar an inmate's due process arguments where the appellate court had erred on direct appeal in reweighing the aggravating factors. Gillett v. State, 148 So. 3d 260, 2014 Miss. LEXIS 287 (Miss. 2014).

Because an inmate's claims in his motion for post-conviction relief that his appellate counsel was ineffective were decided on direct appeal, those issues were procedurally barred from appellate review by the doctrine of res judicata. Lattimore v. State, 37 So. 3d 678, 2010 Miss. App. LEXIS 50 (Miss. Ct. App. 2010).

Where appellant pled guilty to two counts of capital murder and two counts of armed robbery in 1979, he filed several motions for post-conviction relief; the circuit court did not err by dismissing his 2007 motion for post-conviction relief under the doctrine of res judicata as set forth in Miss. Code Ann. § 99-39-21(1). Appellant's claim that double jeopardy barred prosecution of his armed robbery convictions was not good cause for an exception to the bar, because appellant delayed thirty years in attacking his armed robbery convictions until he became eligible for parole on his murder convictions. Rowland v. State, 42 So. 3d 545, 2009 Miss. App. LEXIS 310 (Miss. Ct. App. 2009), rev'd, 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

Appellant inmate asserted that he was denied his constitutional rights to notice and jury trial guarantees under the Sixth Amendment but that issue was raised on direct appeal and decided adversely to the inmate. The inmate did not demonstrate a novel claim or a sudden reversal of law relative to those issues that would have exempted a single one of those claims from the procedural bar of res judicata; in fact, he again relied on Apprendi just as he did on direct appeal but the issue was without merit and currently barred, Miss. Code Ann. § 99-39-21(3) Havard v. State, 988 So. 2d 322, 2008 Miss. LEXIS 264 (Miss. 2008).

Because the issue of whether defendant's appearance before the jury venire wearing shackles was discussed and rejected by the court on direct appeal, the claim was barred by res judicata. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Inmate's claims that his attorneys were ineffective in failing to object to the sufficiency of the indictment, failing to object to the improper removal of jurors for cause, failing to effectively cross-examine witnesses for the prosecution, failing to object to character evidence, failing to object to evidence of flight, and failing to secure proper jury instructions, were barred by res judicata because the claims were considered and rejected on direct appeal. Spicer v. State, 973 So. 2d 184, 2007 Miss. LEXIS 619 (Miss. 2007).

Post-conviction issues, reviewed for the first time, can be subjected to cumulative-error scrutiny without being barred by the doctrine of res judicata. Thorson v. State, 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Res judicata barred an individual's claims of mental retardation and ineffective assistance of trial counsel as those claims had been considered on the merits on direct appeal, and the individual had not complied with the procedures set forth in case law to raise a mental retardation claim. Branch v. State, 961 So. 2d 659, 2007 Miss. LEXIS 276 (Miss. 2007), cert. denied, 552 U.S. 1150, 128 S. Ct. 1084, 169 L. Ed. 2d 824, 2008 U.S. LEXIS 950 (U.S. 2008).

Individual's claims regarding admission of victim impact testimony, the refusal to issue certain death sentence instructions, and ineffective assistance of counsel claims were procedurally barred under Miss. Code Ann. § 99-39-21(3) where the issues were identical, almost verbatim, to the issues raised on direct appeal. Branch v. State, 961 So. 2d 659, 2007 Miss. LEXIS 276 (Miss. 2007), cert. denied, 552 U.S. 1150, 128 S. Ct. 1084, 169 L. Ed. 2d 824, 2008 U.S. LEXIS 950 (U.S. 2008).

Denial of the inmate's petition for post-conviction relief pursuant to Miss. Code Ann. §§ 99-39-1 et seq. was appropriate in part because the supreme court's review of the proportionality of the death sentence on direct appeal was not inadequate, Miss. Code Ann. § 99-19-105(3); first, the issue was procedurally barred because it had already been decided; and second, the supreme court once again found that the sentence imposed was not disproportionate because, in his course of robbing two stores, the inmate killed two men without provocation. Turner v. State, 953 So. 2d 1063, 2007 Miss. LEXIS 2 (Miss. 2007).

Court denied defendant's petition for post-conviction relief after defendant was convicted of capital murder and sentenced for death when res judicata under Miss. Code Ann. § 99-39-21(3) barred the claims about prosecutorial misconduct, evidentiary rulings like the admission of prior bad acts, jury instructions, and ineffective counsel that were raised in defendant's direct appeal. Hodges v. State, 949 So. 2d 706, 2006 Miss. LEXIS 692 (Miss. 2006), cert. denied, 552 U.S. 1061, 128 S. Ct. 705, 169 L. Ed. 2d 552, 2007 U.S. LEXIS 12873 (U.S. 2007).

Because the appellate court had already held it was reasonable to conclude that defendant repeatedly ran over the victim's body in order to disguise the injuries he had already inflicted and that there was sufficient evidence that the murder was committed in an effort to avoid lawful arrest, defendant could not recast the same issue as ineffective assistance of counsel; the issue was procedurally barred from further consideration on collateral review by the doctrine of res judicata, Miss. Code Ann. § 99-39-21(3). Mitchell v. State, 886 So. 2d 704, 2004 Miss. LEXIS 1037 (Miss. 2004), cert. denied, 544 U.S. 1022, 125 S. Ct. 1982, 161 L. Ed. 2d 864, 2005 U.S. LEXIS 3824 (U.S. 2005).

Prisoner's claim that waiver of the sentencing jury and the imposition of a sentence of death by the trial court violated Miss. Code Ann. § 99-19-101 was barred from relitigation by Miss. Code Ann. § 99-39-21(3) and was without merit. Bishop v. State, 882 So. 2d 135, 2004 Miss. LEXIS 773 (Miss. 2004), cert. denied, 543 U.S. 1189, 125 S. Ct. 1401, 161 L. Ed. 2d 194, 2005 U.S. LEXIS 2123 (U.S. 2005).

Where defendant argued during a hearing on a motion to suppress his statements that was decided against him, that the State had delayed filing formal charges in an attempt to extract a confession from him, and later raised the same issue in a direct appeal and a petition for a writ of certiorari in the United States Supreme Court, his claim in a postconviction relief petition was barred by res judicata and procedurally barred from relitigation under Miss. Code Ann. § 99-39-21(3). Grayson v. State, 879 So. 2d 1008, 2004 Miss. LEXIS 721 (Miss. 2004), cert. denied, 543 U.S. 1155, 125 S. Ct. 1301, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1593 (U.S. 2005).

Denial of the inmate's motion for leave to proceed with a petition for postconviction relief in the trial court was proper, where his argument that a videotape expressing his remorse should have been admitted was barred by res judicata. Simmons v. State, 869 So. 2d 995, 2004 Miss. LEXIS 49 (Miss.), cert. denied, 543 U.S. 960, 125 S. Ct. 436, 160 L. Ed. 2d 325, 2004 U.S. LEXIS 7185 (U.S. 2004).

As an inmate's claims raised in his application for leave to seek post-conviction relief had been considered and rejected on direct appeal pursuant to Miss. Code Ann. § 99-39-21(3), res judicata barred further consideration of them, and his death sentences were allowed to stand. Stevens v. State, 867 So. 2d 219, 2003 Miss. LEXIS 822 (Miss. 2003), cert. denied, 543 U.S. 858, 125 S. Ct. 222, 160 L. Ed. 2d 96, 2004 U.S. LEXIS 6409 (U.S. 2004).

Claims of ineffective assistance of counsel was barred from review by the doctrine of res judicata because the underlying issues had been resolved on direct appeal. Simon v. State, 857 So. 2d 668, 2003 Miss. LEXIS 447 (Miss. 2003), cert. denied, 541 U.S. 977, 124 S. Ct. 1885, 158 L. Ed. 2d 475, 2004 U.S. LEXIS 2641 (U.S. 2004).

In a capital murder case, defendant's petition for post-conviction relief was denied as the supreme court had already addressed the merits on direct appeal of his underlying ineffectiveness of counsel claims, which were found to be without merit; thus, defendant could not show the requisite deficient performance and resulting prejudice necessary to establish the ineffective assistance claims and they were res judicata. Walker v. State, 863 So. 2d 1, 2003 Miss. LEXIS 534 (Miss. 2003), cert. denied, 543 U.S. 842, 125 S. Ct. 281, 160 L. Ed. 2d 68, 2004 U.S. LEXIS 5982 (U.S. 2004).

Although all of petitioner death row inmate's arguments were procedurally barred either by res judicata or for failure to raise the arguments earlier, and no intervening case law exempted petitioner from the procedural bar, the court also reviewed petitioner's arguments on the merits; it reiterated its earlier holdings that there were no constitutional deficiencies in the Mississippi murder and death penalty statutes, including those relating to death resulting from child abuse as capital murder, and that none of the alleged deficiencies of defense counsel could have affected petitioner's outcome. Jackson v. State, 860 So. 2d 653, 2003 Miss. LEXIS 355 (Miss. 2003).

Petitioner's claim in his second post-conviction petition that his counsel were ineffective during the culpability phase of his trial was barred by the doctrine of res judicata, Miss. Code Ann. § 99-39-21(3), as that claim had been raised and rejected on direct appeal and in his first post-conviction petition. Woodward v. State, 843 So. 2d 1, 2003 Miss. LEXIS 92 (Miss. 2003).

There had been probable cause to arrest a petitioner for murder, as he was the only surviving member of his family, his murdered half-sister's car was missing, and petitioner's car had not been. As this issue was correctly decided on direct appeal, it was procedurally barred in his post-conviction petition under the doctrine of res judicata, Miss. Code Ann. § 99-39-21(3). McGilberry v. State, 843 So. 2d 21, 2003 Miss. LEXIS 93 (Miss. 2003).

The defendant was barred from arguing that he was improperly denied a mistrial after three members of the venire questioned the trial judge about the possibility of parole if the defendant were sentenced to life in prison since this issue was argued on direct appeal. Wiley v. State, 750 So. 2d 1193, 1999 Miss. LEXIS 191 (Miss. 1999), cert. denied, 530 U.S. 1275, 120 S. Ct. 2742, 147 L. Ed. 2d 1007, 2000 U.S. LEXIS 4536 (U.S. 2000).

Postconviction relief petitioner's claim that trial court erred in excluding expert testimony offered to show that, because of petitioner's mental retardation, he could not have made knowing, intelligent or voluntary waiver of his right to testify was barred by res judicata, particularly as petitioner had been found competent to stand trial, and all evidence presented was merely cumulative; petitioner's claim went to his overall competence to stand trial and could not be separated to encompass only issue of exclusion of expert testimony. Neal v. State, 687 So. 2d 1180, 1996 Miss. LEXIS 423 (Miss. 1996).

Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in postconviction relief statute are applicable in death penalty postconviction relief application. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Postconviction relief is not granted upon facts and issues which could or should have been litigated at trial and on appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant was procedurally barred by res judicata from raising in application for postconviction collateral relief issue of whether defendant's proposed instruction as to manslaughter was improperly denied, as issue should have been raised on direct appeal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Capital murder defendant was procedurally barred by res judicata from raising in application for postconviction collateral relief contention that, under totality of the circumstances, defense counsel provided ineffective assistance of counsel in failing to properly preserve claims in trial court of numerous issues of judicial and prosecutorial misconduct, as Supreme Court had addressed on direct appeal allegation that cumulative error required reversal. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

Res judicata procedurally barred petitioner from challenging capital sentence under Post-Conviction Collateral Relief Act where issue of prosecution's alleged undisclosed plea bargain for coindictee's testimony, which formed basis of petitioner's challenge, had been raised in petitioner's motion for new trial, was capable of determination at that point, and in fact was litigated and adjudicated to be without merit. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Doctrine of res judicata barred capital murder defendant's postconviction claims of prosecutorial misconduct, where there was no contemporaneous objection. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Parties will be precluded from relitigating a specific issue which was actually litigated in former action, determined by former action, and essential to judgment in former action. American Casualty Co. v. United Southern Bank, 950 F.2d 250, 1992 U.S. App. LEXIS 131 (5th Cir. Miss. 1992).

A capital murder defendant's claim that the trial court failed to properly instruct the jury regarding the prosecution's plea bargain with an accomplice, which would have impeached the accomplice's credibility as a witness, was barred by res judicata in its common law and statutory forms, where the defendant did not request such an instruction during the trial, the proceedings on direct appeal did not reflect mention of the points, and there were no grounds for serious doubt that the defendant was legally guilty of capital murder. Culberson v. State, 580 So. 2d 1136, 1990 Miss. LEXIS 428 (Miss. 1990), cert. denied, 502 U.S. 943, 112 S. Ct. 383, 116 L. Ed. 2d 334, 1991 U.S. LEXIS 6278 (U.S. 1991).

Court does not consider on petition for relief under Mississippi Uniform Post-Conviction Collateral Relief Act issues raised and decided on original appeal, even though theories for relief different from those urged at trial and on appeal are asserted. Because court considered points on their merits on direct appeals, defendant could not be allowed to relitigate same issues. Wiley v. State, 517 So. 2d 1373, 1987 Miss. LEXIS 2915 (Miss. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2024, 100 L. Ed. 2d 610, 1988 U.S. LEXIS 2458 (U.S. 1988).

Application for leave to file motion to vacate judgment in death sentence was denied where all points presented in the application either had been disposed of by prior adjudication making them res judicata, or, had been raised at trial or in prior appeals and were procedurally barred, and many of the points were unsupported by legal authority. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

Although rephrased, issues which were addressed on direct appeal were barred by res judicata on motion to vacate sentence and judgment. Rideout v. State, 496 So. 2d 667, 1986 Miss. LEXIS 2606 (Miss. 1986).

Since, on direct appeal, petitioner had challenged the weight and sufficiency of the evidence, the judgment affirming his conviction rendered the evidence issue res judicata, and it could not be relitigated by petition for post conviction relief. Mann v. State, 490 So. 2d 910, 1986 Miss. LEXIS 2506 (Miss. 1986), overruled in part, Rowland v. State, 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

7. Burden of proof.

To receive hearing on claim of ineffective assistance of counsel, postconviction relief applicant to Supreme Court must demonstrate with specificity and detail the elements of claim. Foster v. State, 687 So. 2d 1124, 1996 Miss. LEXIS 216 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S. Ct. 2488, 138 L. Ed. 2d 996, 1997 U.S. LEXIS 3936 (U.S. 1997).

In order to prevail on a claim that counsel's assistance was so defective as to require reversal of conviction or death sentence, defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. Evans v. State, 485 So. 2d 276, 1986 Miss. LEXIS 2403 (Miss.), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed. 2d 994, 1986 U.S. LEXIS 1704 (U.S. 1986).

Cited in Barnes v. State, 920 So. 2d 1019, 2005 Miss. App. LEXIS 527 (Miss. Ct. App.), cert. dismissed, 920 So. 2d 1008, 2005 Miss. LEXIS 602 (Miss. 2005), cert. dismissed, 921 So. 2d 344, 2005 Miss. LEXIS 761 (Miss. 2005), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 79 (Miss. 2006).

RESEARCH REFERENCES

ALR.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

1987 Mississippi Supreme Court Review, Post conviction relief. 57 Miss. L. J. 524, August, 1987.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

(1) If an evidentiary hearing is required, the judge may appoint counsel for a petitioner who qualifies for the appointment of counsel under Section 99-15-15.

(2) The hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation.

(3) The parties shall be entitled to subpoena witnesses and compel their attendance, including, but not being limited to, subpoenas duces tecum.

(4) The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the petitioner brought before it for the hearing.

(5) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the conviction or sentence under attack, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.

(6) The order as provided in subsection (5) of this section or any order dismissing the petitioner's motion or otherwise denying relief under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article. Excepted from this prohibition is a motion filed under Section 99-19-57(2), raising the issue of the convict's supervening mental illness before the execution of a sentence of death. A dismissal or denial of a motion relating to mental illness under Section 99-19-57(2) shall be res judicata on the issue and shall likewise bar any second or successive motions on the issue. Likewise excepted from this prohibition are those cases in which the petitioner can demonstrate either that there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence. Likewise excepted are those cases in which the petitioner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked. Likewise excepted are those cases in which the petitioner has filed a prior petition and has requested DNA testing under this article, provided the petitioner asserts new or different grounds for relief related to DNA testing not previously presented or the availability of more advanced DNA technology.

(7) No relief shall be granted under this article unless the petitioner proves by a preponderance of the evidence that he is entitled to the relief.

(8) Proceedings under this section shall be subject to the provisions of Section 99-19-42.

(9) In cases resulting in a sentence of death and upon a determination of indigence, appointment of post-conviction counsel shall be made by the Office of Capital Post-Conviction Counsel upon order entered by the Supreme Court promptly upon announcement of the decision on direct appeal affirming the sentence of death. The order shall direct the trial court to immediately determine indigence and whether the inmate will accept counsel.

HISTORY: Laws, 1984, ch. 378, § 12; Laws, 1995, ch. 566, § 5; Laws, 2000, ch. 569, § 13; Laws, 2008, ch. 442, § 41; Laws, 2009, ch. 339, § 6, eff from and after passage (approved Mar. 16, 2009).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to “this chapter” was changed to “this article.” The Joint Committee ratified the correction at its September 18, 2000 meeting.

Editor’s Notes — Laws of 2000, ch. 569, § 1, provides:

“SECTION 1. Sections 1 through 18 of this act may be cited as the ‘Mississippi Capital Post-Conviction Counsel Act.’ ”

Sections 1 through 10 of Laws of 2000, ch. 569 are codified at Article 3 of Chapter 39 of this title. Sections 11 through 18 of ch. 569 contain §§ 99-19-105, 99-39-5, 99-39-23, 99-39-27, 99-15-18, 99-39-28, 99-19-106, and the repeal of § 99-19-49.

Cross References — Filing of motion to proceed in trial court for further proceedings, see § 99-39-27.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

Preservation and accessibility of biological evidence, see § 99-49-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidentiary hearing, generally.
3. —Advising defendant of rights upon guilty plea.
4. Timeliness.
5. —Intervening decision.
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8. Successive writ.
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10. Habeas corpus.
11. Relief denied.

1. In general.

Appellant’s claim that his indictment was defective was procedurally barred from review because the issue was directly addressed in the prior opinion of the court of appeals. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Because the circuit court failed to make specific findings of fact and conclusions of law relating to each issue presented, the appellate court had to reverse and remand for resentencing with the required discussion of the errors asserted in defendant’s motion for post-conviction relief. Beal v. State, 271 So. 3d 713, 2018 Miss. App. LEXIS 625 (Miss. Ct. App. 2018).

Trial court did not err in dismissing appellant’s motion for postconviction relief because the record reflected a sufficient factual basis in support of appellant’s guilty plea and the offense of sexual battery of a child under fourteen years old; appellant testified as to his age at the time of the plea hearing, as well as his birth date, the State’s offer of proof provided that the victim was under fourteen years old, and appellant did not contest that offer of proof. Carter v. State, 204 So.

3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Because defendant's second motion for postconviction relief alleged a violation of defendant's fundamental right not to be convicted while incompetent, the appellate court addressed the merits of defendant's argument. Smith v. State, 149 So. 3d 1027, 2014 Miss. LEXIS 544 (Miss. 2014), overruled, overruled in part, Pitchford v. State, 240 So. 3d 1061, 2017 Miss. LEXIS 420 (Miss. 2017).

Inmate's claim that his parole was unlawfully revoked was not procedurally barred because his post-conviction relief motion fit within an exception to both the general prohibition against successive writs under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-23(6), and the three-year statute of limitations under the Act, Miss. Code Ann. § 99-39-5(2)(b). Walker v. State, 35 So. 3d 555, 2010 Miss. App. LEXIS 167 (Miss. Ct. App. 2010).

Denial of the inmate's petition for post-conviction relief was appropriate because he failed to meet his burden of proof contained in Miss. Code Ann. § 99-39-23(7); the appellate court agreed that there was no confusion as to his understanding of his plea and sentence; he signed the petition to enter a plea of guilty and acknowledged his signature to it at the plea hearing. Harris v. State, 944 So. 2d 900, 2006 Miss. App. LEXIS 567 (Miss. Ct. App. 2006).

Where an inmate filed a petition for a writ of habeas corpus and was seeking for his sentence to be corrected, the petition was treated as a petition for post-conviction relief pursuant to Miss. Code Ann. § 99-39-5. As the inmate had previously filed a petition for post-conviction relief the year before, the present writ was barred as a successive writ under Miss. Code Ann. § 99-39-23 (6). Bynum v. State, 2005 Miss. App. LEXIS 460 (Miss. Ct. App. July 19, 2005), op. withdrawn, sub. op., 916 So. 2d 534, 2005 Miss. App. LEXIS 978 (Miss. Ct. App. 2005).

Defendant's second motion for post-conviction relief was barred as a successive writ. Defendant's failure to perfect an appeal after the first petition was denied was due to his lack of funds and not his attorney's performance. Joshua v. State, 913 So. 2d 1062, 2005 Miss. App. LEXIS 488 (Miss. Ct. App. 2005).

Denial of the inmate's post-conviction motion to vacate an illegal sentence was proper pursuant to Miss. Code Ann. 99-39-23(6) where he did not raise the issue of an illegal sentence in his first petition for post-conviction relief but could have. Thus, the issue was barred by Miss. Code Ann. § 99-39-21(1). Bradley v. State, 919 So. 2d 1062, 2005 Miss. App. LEXIS 467 (Miss. Ct. App. 2005).

Miss. Code Ann. § 99-39-23 barred successive motions for post-conviction relief; although exceptions to the bar existed, defendant failed to plead any facts that would have made any of the exceptions applicable to the issues raised in the appeal; therefore, he was procedurally barred form raising the issues in the appeal, and the appellate court would not consider any of them. Walker v. State, 910 So. 2d 584, 2005 Miss. App. LEXIS 149 (Miss. Ct. App. 2005).

Defendant's petition for post-conviction relief was properly denied where defendant failed to prove that his guilty plea was not voluntarily or intelligently entered, or to reference any action by his court-appointed counsel that was deficient or in any way prejudiced his defense. Jones v. State, 904 So. 2d 1107, 2004 Miss. App. LEXIS 977 (Miss. Ct. App. – 2004), writ of certiorari denied by 898 So. 2d 679, 2005 Miss. LEXIS 249 (Miss. 2005).

Where petitioner raped and murdered a 79-year-old victim, the burden was upon petitioner to prove that he was mentally retarded to such an extent as to avoid the death penalty. Where his IQ score of 81 placed him in the category of "low dull normal," and well above the maximum score for "mild" mental retardation, imposition of the death penalty was not cruel and unusual punishment; further, the jury instructions given at the sentencing phase, in accordance with Miss. Code Ann. § 99-19-101(7), did not violate petitioner's Eighth Amendment rights since the factors contained in § 99-19-101(7) required that the jury find the requisite intent set forth in Enmund and Tison before a death penalty verdict could be returned. Gray v. State, 887 So. 2d 158, 2004 Miss. LEXIS

1166 (Miss. 2004), cert. denied, 545 U.S. 1130, 125 S. Ct. 2935, 162 L. Ed. 2d 870, 2005 U.S. LEXIS 4905 (U.S. 2005).

Defendant's argument that counsel coerced defendant into pleading guilty was directly contradicted by the record, which showed that the trial judge asked defendant specifically about whether defendant had been coerced or threatened into pleading guilty, and defendant responded in the negative; thus defendant's plea was voluntary, there was no showing that counsel was ineffective, and defendant's petition for post-conviction relief was properly denied. Roby v. State, 861 So. 2d 368, 2003 Miss. App. LEXIS 1189 (Miss. Ct. App. 2003).

Regarding execution and mentally retarded offenders, the burden of proof is on the offender to prove that he is mentally retarded. Russell v. State, 849 So. 2d 95, 2003 Miss. LEXIS 297 (Miss. 2003).

Defendant's plea was given voluntarily where defendant signed a sworn statement that acknowledged that he was pleading guilty as a habitual offender and that acknowledged the maximum and minimum sentences as well as the maximum and minimum fine he could receive; defendant's claims in his motion for post-conviction relief were unsupported by affidavits or any other evidence, and they contradicted his sworn statements given before the court in his guilty plea. Hargett v. State, 864 So. 2d 283, 2003 Miss. App. LEXIS 665 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 44 (Miss. 2004).

Where the inmate asserted in petition for post-conviction relief that the inmate had not pleaded guilty, but the inmate's signature appeared on a petition entering the guilty plea, the inmate failed to satisfy the inmate's burden under Miss. Code Ann. § 99-39-23(7) to prove by a preponderance of the evidence that the inmate was entitled to post-conviction relief, as the inmate's sworn signature carried a strong presumption of validity. Atwell v. State, 848 So. 2d 190, 2003 Miss. App. LEXIS 348 (Miss. Ct. App. 2003).

Defendant's claim in a motion for post-conviction relief that he was entitled to a new trial of two counts of robbery to which defendant had pleaded guilty based on newly discovered evidence could not be considered as the claim was being raised for the first time on appeal; defendant could, however raise the issue in a separate proceeding. Donnelly v. State, 841 So. 2d 207, 2003 Miss. App. LEXIS 255 (Miss. Ct. App. 2003).

Defendant seeking post-conviction relief following his conviction of two counts of transfering cocaine failed to sustain his burden of proving that his guilty pleas were involuntary because he had been the victim of a conspiracy to create a crime were none existed, that the State and his attorney had conspired to deprive defendant of his right to due process, and that his attorney had coerced him into pleading guilty because counsel was not ready for trial. Terry v. State, 839 So. 2d 543, 2002 Miss. App. LEXIS 699 (Miss. Ct. App. 2002).

This section has no application to a request by a prisoner for a change in his location. Rochell v. State, 748 So. 2d 103, 1999 Miss. LEXIS 295 (Miss. 1999).

To demonstrate that he was entitled to out-of-time appeal, defendant was required to show by preponderance of the evidence that he asked his attorney to file appeal within time limit for doing so and that through no fault of defendant's, his attorney failed to file appeal. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Defendant who signed statement indicating that his attorney had advised him of his right to appeal his conviction and sentence and that after discussing his case with his attorney, he did not wish to pursue appeal, was not entitled to file out-of-time appeal when he changed his mind nearly a year later. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Appropriate standard for trial court in reviewing postconviction motion for new trial is whether petitioner has proved by a preponderance of evidence that material facts exist which had not previously been heard and which require vacation of conviction or sentence. Turner v. State, 673 So. 2d 382, 1996 Miss. LEXIS 149 (Miss. 1996).

Recanting affidavit of coindictee who testified against capital murder defendant did not undermine confidence in outcome of original verdict against defendant so as to warrant new trial, despite allegation that prosecution entered into undisclosed plea bargain for coindictee's testimony, where coindictee recanted testimony but stated that testimony had been "colored" rather than perjured, coindictee later recanted his recantation of his testimony by repeatedly stating in hearing on motion for new trial that he had "no deal" with prosecution, coindictee's testimony during hearing corroborated the testimony of 3 prosecutors, one of coindictee's attorneys submitted affidavit 6 years after the fact stating that there had been plea bargain, coindictee's co-counsel stated in side bar at hearing that he was unaware of any plea agreements and same attorney never executed any affidavit confirming or denying existence of plea bargain, there was no written plea bargain agreement in the record, and it would have been unusual for coindictee to agree to 5 year sentence in exchange for his testimony when maximum sentence faced by coindictee was 5 years. Williams v. State, 669 So. 2d 44, 1996 Miss. LEXIS 18 (Miss. 1996).

Upon a prima facie showing of the existence of an advance plea agreement between the state and a codefendant who was state's principal witness, whereby in exchange for testifying for the state the codefendant would receive a lenient sentence for armed robbery, a defendant, who had been convicted for the same robbery as accessory before the fact, may be entitled to postconviction relief where the agreement had not been disclosed prior to his trial, although the defense had made a general discovery request for exculpatory material, and the existence of any such agreement had been denied by the codefendant while testifying at the defendant's trial. Case would be remanded to circuit court for evidentiary hearing. Malone v. State, 486 So. 2d 367, 1986 Miss. LEXIS 3139 (Miss. 1986).

2. Evidentiary hearing, generally.

Post-conviction relief court violated Miss. R. Evid. 606(b) by allowing a juror to be questioned about how alleged extraneous information affected his deliberations. Roach v. State, 116 So. 3d 126, 2013 Miss. LEXIS 348 (Miss. 2013).

Caselaw requires, as a threshold to obtain an evidentiary hearing on whether a defendant was mentally retarded, the production of a qualified expert and the expert's corresponding opinion. Once that threshold is met, evidence and testimony may be presented at the hearing consistent with the Mississippi Rules of Evidence and the United States and Mississippi Constitutions. Goodin v. State, 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

Defendant's capital sentence for murder constituted cruel and unusual punishment, in violation of U.S. Const. amend. VIII, because defendant established, by a preponderance of the evidence, at a hearing for postconviction relief that defendant was mentally retarded in that defendant – through expert testimony, lay testimony, and prior records – proved that defendant had sub-average intellectual functioning, significant deficits in adaptive functioning, and that defendant's deficits manifested before age eighteen. Goodin v. State, 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

Probation revocation order failed to reflect on its face whether the circuit judge considered evidence showing that defendant more likely than not committed the offenses for which he was arrested; because the order appeared to be based upon defendant's arrest rather than the underlying facts, remand for an evidentiary hearing was required. Scott v. State, 24 So. 3d 1039, 2010 Miss. App. LEXIS 13 (Miss. Ct. App. 2010).

Defendant raised a claim of ineffective assistance of counsel which required a full evidentiary hearing, Miss. Code Ann. § 99-39-23, as there was evidence that may have changed the outcome of a jury trial; the voluntariness and knowledge of defendant's guilty plea were in doubt and had to be addressed in the evidentiary hearing. Hannah v. State, 2006 Miss. LEXIS 365 (Miss. July 20, 2006), op. withdrawn, sub. op., 943 So. 2d 20, 2006 Miss. LEXIS 578 (Miss. 2006).

Defendant did not present any affidavits to substantiate his claim that his trial counsel forced him to plead guilty, nor did he offer any evidence of this claim when he had an opportunity to do so before the trial court. It appeared quite clear that defendant was forced to go to trial not by anything that his lawyer said or did but by the trial court's refusal to give him a last minute continuance; thus, defendant was not entitled to present evidence on his ineffective assistance claim during the hearing on his motion to vacate judgment and sentence. Willcutt v. State, 910 So. 2d 1189, 2005 Miss. App. LEXIS 608 (Miss. Ct. App. 2005).

Successive application for post-conviction relief of a death row inmate who claimed to be mentally retarded was granted in part; an evidentiary hearing was ordered at which the inmate would be obliged to prove he met the applicable standard of mental retardation by a preponderance of the evidence. Foster v. State, 848 So. 2d 172, 2003 Miss. LEXIS 294 (Miss. 2003).

In defendant's capital murder case, defendant produced enough evidence to be granted leave to proceed with a petition for post-conviction relief in the trial court on the issue of his mental retardation where he submitted expert testimony regarding his low IQ level. Goodin v. State, 856 So. 2d 267, 2003 Miss. LEXIS 353 (Miss. 2003), cert. denied, 541 U.S. 947, 124 S. Ct. 1681, 158 L. Ed. 2d 375, 2004 U.S. LEXIS 2196 (U.S. 2004), overruled, Lynch v. State, 951 So. 2d 549, 2007 Miss. LEXIS 34 (Miss. 2007).

Defendant who signed statement indicating that his attorney had advised him of his right to appeal his conviction and sentence and that after discussing his case with his attorney, he did not wish to pursue appeal, was not entitled to file out-of-time appeal when he changed his mind nearly a year later. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Trial court did not use erroneous legal standard in denying relief to postconviction relief petitioner, despite claim that court erroneously applied harmless error analysis, rather than holding petitioner to burden of proof by preponderance of evidence; while court did find that if petitioner had been denied right to testify under circumstances, it would have been harmless error, and did not specifically state what petitioner's burden of proof was, court stated that there was "absolutely no proof that the Defendant was denied the right to testify," and went on to hold that as matter of law petitioner had failed to meet his burden of proof under Postconviction Collateral Relief Act. Neal v. State, 687 So. 2d 1180, 1996 Miss. LEXIS 423 (Miss. 1996).

Fact that friend of postconviction petitioner's family came forward and confessed after statute of limitations for crime had run was not new evidence entitling petitioner to a new trial on drug charges, particularly when testimony revealed that many drug transactions transpired daily in the area, and friend could not say that drug transactions with which he was involved were transactions for which petitioner was convicted. Turner v. State, 673 So. 2d 382, 1996 Miss. LEXIS 149 (Miss. 1996).

A postconviction relief petitioner who claimed he was not competent to be executed bore the burden of showing by a preponderance of the evidence that, at the time of the hearing, he was not competent; even after he made the threshold showing that entitled him to proceed in trial court under § 99-39-27, he faced a presumption that he was sane and competent to be executed. Billiot v. State, 655 So. 2d 1, 1995 Miss. LEXIS 88 (Miss. 1995), cert. denied, 516 U.S. 1095, 116 S. Ct. 818, 133 L. Ed. 2d 762, 1996 U.S. LEXIS 787 (U.S. 1996).

Upon remand of case for evidentiary hearing pursuant to this section, if defendant proves, by a preponderance of the evidence, that he, within the time for filing notice of appeal, asked his attorney to appeal, and that his attorney, through no fault of the defendant, failed to appeal, then the motion for out-of-time appeal should be granted, and counsel should be appointed to represent the defendant for purposes of the appeal. Barnett v. State, 497 So. 2d 443, 1986 Miss. LEXIS 2732 (Miss. 1986).

3. —Advising defendant of rights upon guilty plea.

Circuit court properly denied appellant's motion for post-conviction relief based on procedural bars because appellant did not show the violation of a fundamental constitutional right; the motion was filed outside the three-year statute of limitations and was a successive writ, and the failure to inform appellant of his right against self-incrimination did not exempt his motion from procedural bars when he acknowledged that he understood he was giving up certain rights. Boyd v. State, 155 So. 3d 914, 2014 Miss. App. LEXIS 489 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 201 (Miss. 2015), cert. dismissed, 160 So. 3d 704, 2015 Miss. LEXIS 200 (Miss. 2015).

Where defendant failed to show that a guilty plea was involuntary under former Miss. Unif. Cir. & County Ct. Prac. R. 3.03(2) [currently 8.04(3)], and Miss. Code Ann. § 99-39-23 and waived the right to object to the alleged illegality of the search of a vehicle, the trial court's findings were not clearly erroneous. Young v. State, 859 So. 2d 1025, 2003 Miss. App. LEXIS 994 (Miss. Ct. App. 2003).

A defendant was entitled to an evidentiary hearing pursuant to § 99-39-13 through this section on the issue of whether his guilty plea was entered voluntarily and intelligently where the transcript of the defendant's plea hearing did not reflect that he was advised concerning the rights of which he alleged he was ignorant; the State would be entitled to prove at the evidentiary hearing that the defendant learned of the rights in question, either from the trial judge or from some other source, prior to pleading guilty. Alexander v. State, 605 So. 2d 1170, 1992 Miss. LEXIS 573 (Miss. 1992).

4. Timeliness.

Appellant's motion for post-conviction relief (PCR) was properly procedurally barred because appellant filed his second PCR motion more than eight years after pleading guilty and approximately three months after the trial court denied and dismissed all of his claims asserted in his original PCR motion. Green v. State, — So. 3d —, 2019 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 19, 2019), cert. denied, 276 So. 3d 660, 2019 Miss. LEXIS 298 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 876, 205 L. Ed. 2d 494, 2020 U.S. LEXIS 324 (U.S. 2020).

When defendant did not allege defendant did not timely perfect an appeal through no fault of defendant's, an appellate court was not deprived of jurisdiction because the State did not appeal a civil post-conviction order granting defendant an out-of-time appeal or argue the order was void. Griffin v. State, 269 So. 3d 337, 2018 Miss. App. LEXIS 187 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 796, 2019 Miss. LEXIS 6 (Miss. 2019).

Appellant's motion for postconviction relief was untimely and thus, barred by the three-year statute of limitations of the Mississippi Uniform Postconviction Collateral Relief Act, because it was filed nearly nine years after appellant entered his guilty plea. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Circuit court denied defendant's motion for post-conviction relief in accordance with Miss. Code Ann. § 99-39-23(6); because defendant had previously filed a motion for post-conviction relief and his second motion for post-conviction relief did not fit into any of the statute's exceptions, he was barred from filing a second motion. Smith v. State, 12 So. 3d 563, 2009 Miss. App. LEXIS 337 (Miss. Ct. App. 2009).

Where defendant was found guilty of selling cocaine and later pled guilty to two other charges, defendant failed to prove that he was entitled to an out-of-time appeal from the first conviction under Miss. Code Ann. § 99-39-5; although defendant initially wanted to appeal his first conviction, he changed his mind as a result of a plea agreement. Andrews v. State, 923 So. 2d 239, 2006 Miss. App. LEXIS 160 (Miss. Ct. App. 2006).

Court did not err in denying defendant's motion to supplement his petition for postconviction relief because defendant's attempt to do so over four and a half years after the trial court's denial of that petition was, in effect, a successive motion that was procedurally barred under Miss. Code Ann. § 99-39-23(6). Sanchez v. State, 913 So. 2d 1024, 2005 Miss. App. LEXIS 313 (Miss. Ct. App.), cert. dismissed, 920 So. 2d 1008, 2005 Miss. LEXIS 605 (Miss. 2005).

Defendant's petition seeking post-conviction relief was barred under the successive writ prohibition, Miss. Code Ann.

§ 99-39-23(6), which states that a court order denying relief under this article is a final judgment and is conclusive until reversed, and as a result, such an order is a bar to a second or successive motion under this article; the record showed that defendant first filed a post-conviction petition on July 31, 2000, and the court denied relief, but defendant failed to appeal the denial, and as a consequence, that order was final and beyond review on a subsequent petition. Kemp v. State, 904 So. 2d 1162, 2004 Miss. App. LEXIS 1009 (Miss. Ct. App. 2004).

Where the circuit court properly denied the inmate's petition for postconviction relief filed 10 years after his sentence was imposed because it was untimely, the inmate's second motion for postconviction relief was procedurally barred. Jones v. State, 897 So. 2d 195, 2004 Miss. App. LEXIS 954 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 208 (Miss. 2005).

Defendant was barred from bringing a successive motion where defendant had previously brought more than one motion seeking relief and no timely appeal had been taken; defendant's motion did not fall within any applicable exception. Hires v. State, 856 So. 2d 438, 2003 Miss. App. LEXIS 296 (Miss. Ct. App. 2003), aff'd, in part, 2004 Miss. LEXIS 695 (Miss. June 17, 2004).

5. —Intervening decision.

Inmate's applications for post-conviction relief and for leave to file a motion to vacate the death sentence were denied as the inmate had already raised the argument of the "intervening decision" via a motion for rehearing and a separate motion for appointment of counsel and for litigation expenses; the inmate was essentially seeking a rehearing of that motion under the guise of a post-conviction claim by combining it with a "new" claim of ineffective assistance of counsel, which was prohibited by Miss. R. App. P. 27(h). Wiley v. State, 842 So. 2d 1280, 2003 Miss. LEXIS 187 (Miss. 2003).

The intervening decision exception to the 3-year statute of limitations set forth in § 99-39-5(2) and subsection (6) of this section applies only to those decisions that create new intervening rules, rights, or claims that did not exist at the time of the prisoner's conviction or during the 3-year period circumscribed by the statute of limitations; thus, in a proceeding regarding a petitioner's motion to vacate a guilty plea, the decision in Vittitoe v. State (Miss. 1990) 556 So. 2d 1062, which was based on the failure of the trial court to follow the mandates of Rule 3.03, Miss. Unif. Crim. R. Cir. Ct. Prac. when the defendant entered his guilty plea, did not qualify under the intervening decision exception because it simply recognized and applied a pre-existing rule that had been in existence for at least 4 years when the petitioner entered his guilty plea. Patterson v. State, 594 So. 2d 606, 1992 Miss. LEXIS 42 (Miss. 1992).

6. —Expiration of sentence.

The movant could not rely on the exception contained in subsection (6) for a case in which a prisoner claimed that his sentence would have expired. If it were not for an illegal habitual offender sentence, his rightful sentence would have expired had he received the non-habitual offender penalty. Sneed v. State, 722 So. 2d 1255, 1998 Miss. LEXIS 447 (Miss. 1998).

7. Right to appointed counsel.

Appellant's motion for post-conviction relief was properly denied because the trial court was not request to appoint counsel during the revocation hearing; the revocation hearing was straightforward, and the trial court instructed appellant that he could cross-examine witnesses, testify on his own behalf, and call any witnesses that he wanted. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Inmate was not entilted to court-appointed counsel at his post-conviction relief evidentiary hearing and appeal under Miss. Code Ann. §§ 99-39-23(1) and 99-15-15 as the record revealed no need for appointment of counsel for post-trial or appellate proceedings. Higginbotham v. State, 114 So. 3d 9, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. 2012), cert. denied, 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

Court erred under Miss. Code Ann. § 99-39-23(7) in denying defendant's motion for postconviction relief, which requested that he be allowed to file an out-of-time appeal after his appeal was dismissed for failure to pay costs, because his trial counsel had been appointed, indicating that he was indigent. The costs of his appeal should have been paid by the county. Crump v. State, 913 So. 2d 385, 2005 Miss. App. LEXIS 282 (Miss. Ct. App. 2005).

Inmate's right to counsel under Miss. Const. art. III, § 26 was not denied, where the inmate argued that the inmate was denied counsel at the evidentiary hearing on the inmate's post-conviction relief petition; the inmate had no right to counsel under the Miss. Const. art. III, § 26, and it was within the trial judge's discretion under Miss. Code Ann. § 99-39-23(1) whether to appoint counsel. Putnam v. State, 877 So. 2d 468, 2003 Miss. App. LEXIS 1205 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 861 (Miss. 2004).

The appellant, who was incarcerated in South Dakota, was entitled to appointed counsel because; (1) access to Mississippi case law materials was limited because the South Dakota prison facility did not maintain Mississippi law materials; (2) his requests for legal assistance to the Mississippi State Penitentiary Law Library were ignored, and the Mississippi State Law Library advised him to provide more detailed requests; and (3) he could not afford an attorney. Unruh v. Puckett, 716 So. 2d 636, 1998 Miss. LEXIS 311 (Miss. 1998).

A trial court did not err in failing to sua sponte appoint counsel for a postconviction relief petitioner at the evidentiary hearing, in spite of the petitioner's contention that it was clear that he lacked knowledge and understanding of the proceedings being conducted by the court. A criminal defendant has neither a state nor federal constitutional right to appointed counsel in postconviction proceedings. Additionally, the appointment of counsel at an evidentiary hearing is discretionary with the trial judge by virtue of subsection (1) of this section. Moore v. State, 587 So. 2d 1193, 1991 Miss. LEXIS 708 (Miss. 1991).

Neither Eighth Amendment nor Fourteenth Amendment due process clause requires states to appoint counsel for indigent death row inmates seeking state postconviction relief; considerations such as those listed by District Court in instant case should not be treated as factual findings since such treatment could permit different constitutional rules to apply in different states; and District Court would be able on remand to remedy any alleged denial to death row inmates of adequate and timely access to prison library. Murray v. Giarratano, 492 U.S. 1, 109 S. Ct. 2765, 106 L. Ed. 2d 1, 1989 U.S. LEXIS 3134 (U.S. 1989).

8. Successive writ.

Circuit court dismissed petitioner's postconviction relief motion, and thus any subsequent filing that the circuit court treated as a petition for postconviction relief was successive writ barred; furthermore, petitioner already raised his claims in his first motion, and thus res judicata prevented relitigation of these claims, plus he failed to establish that any fundamental right was violated. Shelton v. State, — So. 3d —, 2019 Miss. App. LEXIS 185 (Miss. Ct. App. Apr. 30, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 432 (Miss. 2019), cert. denied, 279 So. 3d 1086, 2019 Miss. LEXIS 375 (Miss. 2019).

Appellant's post-conviction relief motion was successive-writ barred because it was his third attempt, and neither his ineffective assistance of counsel argument nor his newly discovered evidence argument overcame the procedural bar. Porter v. State, 281 So. 3d 935, 2019 Miss. App. LEXIS 133 (Miss. Ct. App. 2019).

Appellant's newly discovered evidence argument did not overcome the procedural bar because the grand jury minutes, or even the lack of minutes, were easily discoverable during appellant's trial and could not constitute newly discovered evidence; also, the record on appeal contained the indictments for armed robbery and for drive-by-shooting and unlawful possession of firearm or weapon by a convicted felon. Porter v. State, 281 So. 3d 935, 2019 Miss. App. LEXIS 133 (Miss. Ct. App. 2019).

Appellant's motion for post-conviction relief (PCR) was properly procedurally barred because the claims made in the second PCR motion were raised in the first PCR; thus, the doctrine of res judicata barred the issues previously raised. Green v. State, — So. 3d —, 2019 Miss. App. LEXIS 73 (Miss. Ct. App. Feb. 19, 2019), cert. denied, 276 So. 3d 660, 2019 Miss. LEXIS 298 (Miss. 2019), cert. denied, — U.S. —, 140 S. Ct. 876, 205 L. Ed. 2d 494, 2020 U.S. LEXIS 324 (U.S. 2020).

Circuit court properly dismissed appellant's third post-conviction relief motion because it was an impermissible successive motion; appellant presented the same claim that the court of appeals had previously rejected. Green v. State, 294 So. 3d 634, 2019 Miss. App. LEXIS 478 (Miss. Ct. App. 2019), cert. denied, 291 So. 3d 1111, 2020 Miss. LEXIS 155 (Miss. 2020).

Since the trial court previously addressed appellant's arguments in two prior post-conviction proceedings, his current motion was successive and, therefore, barred; notwithstanding the successive nature of appellant's motion for post-conviction relief, the court of appeals addressed the merits of his issues on appeal. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Appellant was not entitled to any relief because it was his third post-conviction relief (PCR) motion; appellant did not appeal from the denial of either his first or second (PCR) motions, and the orders denying those motions became final prior to his filing the third motion, and thus, the issues presented were procedurally barred. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Circuit court properly dismissed appellant's motion for post-conviction relief on the ground that it was procedurally barred as a successive writ because appellant failed to offer any meritorious reasons why the successive-writ bar did not apply; the terms and conditions of appellant's probation were contained in the record, the petition for revocation provided him with the specific probation violations, and he transcript of the hearing indicated the circuit court considered the evidence. Williams v. State, 248 So. 3d 910, 2018 Miss. App. LEXIS 258 (Miss. Ct. App. 2018).

Because defendant did not raise the issue of newly discovered evidence in the circuit court or his first post-conviction relief motion, and his claim was not newly discovered evidence as the evidence could have been reasonably discovered at trial, and because his second post-conviction relief motion did not raise a violation of fundamental constitutional rights, his second post-conviction relief motion was procedurally barred as a successive writ. Mays v. State, 228 So. 3d 946, 2017 Miss. App. LEXIS 133 (Miss. Ct. App. 2017).

Writ was successive because there was no newly discovered evidence based on the fact that petitioner had been injured when he was struck by a van at the age of 14; petitioner had known of this injury for 20 years and he did not inform the trial court of such during the plea colloquy. Moreover, there was no ineffective assistance of counsel based on the fact that his attorney did not request a mental evaluation; petitioner did not behave in a manner that should have caused the attorney to recognize that there was any problem. Feliciano v. State, 229 So. 3d 168, 2017 Miss. App. LEXIS 109 (Miss. Ct. App.), cert. denied, 229 So. 3d 710, 2017 Miss. LEXIS 471 (Miss. 2017).

Defendant's motion for post-conviction relief was properly denied as her claim was barred by the successive-writ procedural bar because she was not entitled to a new trial based on newly discovered evidence as her history of mental issues, her list of medications, the psychological-evaluation report and the pharmacist's affidavit were reasonably discoverable at the time of her plea; and the supreme court's decision was not an intervening decision, and it failed to create any rules, rights, or claims that did not already exist at the time of defendant's guilty plea and sentence, as the issue of competency was never raised before her plea. Williams v. State, 252 So. 3d 1067, 2017 Miss. App. LEXIS 648 (Miss. Ct. App. 2017), cert. denied, 252 So. 3d 596, 2018 Miss. LEXIS 378 (Miss. 2018), in part, — So. 3d —, 2018 Miss. App. LEXIS 45 (Miss. Ct. App. 2018).

Because petitioner filed a successive post-conviction relief motion twenty years after his guilty pleas were entered, his claims were both time-barred and barred as a successive writ; petitioner did not demonstrate that his claims constituted an exception to these procedural bars. Bardney v. State, 236 So. 3d 825, 2017 Miss. App. LEXIS 545 (Miss. Ct. App. 2017).

Applicant's third postconviction relief (PCR) motion based on the right to a sentencing jury was procedurally barred because it was capable of determination at the time of his sentencing; moreover, the claim was barred because it was raised in a second or successive PCR motion. The applicant was not exempt from the procedural bars because the sentence imposed was not illegal; even if the trial court did not specifically confirm on the record that the applicant did not want a sentencing jury, the sentence did not exceed the maximum statutory penalty for the crime of aggravated assault on an elderly victim. Williams v. State, 218 So. 3d 1190, 2016 Miss. App. LEXIS 148 (Miss. Ct. App. 2016), aff'd, 222 So. 3d 265, 2017 Miss. LEXIS 178 (Miss. 2017).

Pursuant to Miss. Code Ann. § 99-39-23(6), the trial court's denial of petitioner's first postconviction relief motion barred the instant PCR motion. Wallace v. State, 180 So. 3d 767, 2015 Miss. App. LEXIS 607 (Miss. Ct. App. 2015).

Because defendant had previously filed a postconviction relief motion, defendant's claims in a postconviction relief motion were successive-writ barred. Furthermore, defendant's claims were not entitled to an exception to the procedural bar because defendant's claims that the indictment and information were defective, that defendant was subjected to double jeopardy, and that defendant received ineffective assistance of counsel were without merit. Pinkney v. State, 192 So. 3d 337, 2015 Miss. App. LEXIS 614 (Miss. Ct. App. 2015).

Defendant's post-conviction relief (PCR) motion was subsequent-writ barred because there was a previous order dismissing a PCR motion by defendant in defendant's noncapital case, that was also premised on a claim by defendant of ineffective assistance of counsel. Avery v. State, 179 So. 3d 1182, 2015 Miss. App. LEXIS 320 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 594 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 1210, 194 L. Ed. 2d 213, 2016 U.S. LEXIS 1602 (U.S. 2016).

Defendant's post-conviction relief claims were procedurally barred because they were an impermissible successive writ. Ruffin v. State, 176 So. 3d 153, 2015 Miss. App. LEXIS 512 (Miss. Ct. App.), sub. op., 188 So. 3d 1240, 2015 Miss. App. LEXIS 688 (Miss. Ct. App. 2015).

Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; appellant's claims of ineffective assistance and the voluntariness of his guilty pleas were subject to the procedural bars. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

Holding that where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective, is limited to the federal habeas corpus proceedings and does not apply to state post-conviction proceedings. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

Circuit court properly dismissed petitioner's application for post-conviction relief because the petition was time-barred and procedurally barred as a successive writ; no fundamental-right exception applied to overcome the procedural bars. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

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Circuit court properly summarily dismissed appellant's motion for post-conviction relief because it was time-barred and successive-writ barred pursuant to the Uniform Post-Conviction Collateral Relief Act; although claims of mental competency were not subject to the procedural bars or res judicata, appellant gave neither the circuit court nor his attorney any reason to question his competency at his guilty-plea hearing. Jones v. State, 174 So. 3d 902, 2015 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 471 (Miss. 2015).

Nothing in the record, nor in appellant's post-conviction relief (PCR) motion, suggested that his guilty plea to statutory rape was not knowingly and voluntarily entered, or that the plea was otherwise invalid. Therefore, the trial court did not err in dismissing appellant's PCR motion as a successive writ. Boyd v. State, 175 So. 3d 59, 2015 Miss. App. LEXIS 152 (Miss. Ct. App.), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 492 (Miss. 2015).

Prisoner's motion for reinstatement of probation was barred by res judicata because the motion was actually the prisoner's second motion for post-conviction relief (PCR) and the issues which were raised in the prisoner's appeal were the same issues that were raised in the earlier PCR motion. The circuit court addressed each of the prisoner's allegations therein regarding the revocation of the prisoner's probation and dismissed them in its order. Yearby v. State, 164 So. 3d 1085, 2015 Miss. App. LEXIS 163 (Miss. Ct. App. 2015).

Because the claim that appellant was illegally indicted as a habitual offender was raised in his prior petition for post-conviction relief (PCR) and fully adjudicated by both the circuit court and the appellate court, the instant PCR motion was barred as a successive writ. Parham v. State, 174 So. 3d 880, 2015 Miss. App. LEXIS 83 (Miss. Ct. App.), cert. denied, — So. 3d —, 2015 Miss. LEXIS 485 (Miss. 2015).

Appellant's actual-innocence claim in his second post-conviction relief (PCR) motion was barred as a successive writ. In his first PCR motion, appellant brought an identical actual-innocence argument – that he was passed out when the murder happened. Trotter v. State, 212 So. 3d 829, 2014 Miss. App. LEXIS 628 (Miss. Ct. App. 2014), aff'd, — So. 3d —, 2016 Miss. LEXIS 409 (Miss. 2016).

Although an inmate's pro se status allowed for technical drafting errors, the inmate's motion for a writ of habeas corpus ad subjiciendum was actually an untimely and successive post-conviction collateral relief (PCCR) motion that was procedurally barred due to the inmate's failure to file the motion within the three-year statutory period and to the inmate's filing of four previous PCCR motions, the denial of one of which was affirmed as untimely and successive. Creel v. King, 161 So. 3d 1098, 2014 Miss. App. LEXIS 681 (Miss. Ct. App. 2014).

Petition for post-conviction relief (PCR) was barred as a successive writ pursuant to the Uniform Post-Conviction Collateral Relief Act because petitioner filed prior petitions for PCR challenging the voluntariness of his plea and alleging counsel was ineffective. Owens v. State, 150 So. 3d 114, 2014 Miss. App. LEXIS 608 (Miss. Ct. App. 2014).

Petitioner's motion was barred as a successive writ, as he filed his recent post-conviction relief challenge after his first motion had already been dismissed. Randall v. State, 148 So. 3d 686, 2014 Miss. App. LEXIS 575 (Miss. Ct. App. 2014).

Trial court incorrectly found that a probationer's motion for postconviction relief was a procedurally barred successive writ when the probationer argued that the probationer's conditional release was unlawfully revoked because the probationer was unable to work at a restitution center due to an alleged medical condition. Boone v. State, 148 So. 3d 377, 2014 Miss. App. LEXIS 100 (Miss. Ct. App.), cert. denied, 151 So. 3d 1017, 2014 Miss. LEXIS 493 (Miss. 2014).

Circuit court properly dismissed appellant's motion for post-conviction collateral relief (PCR) as procedurally barred as a successive writ; because appellant failed to show that an exception applied, his PCR motion was barred under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-23(6). Nichols v. State, 120 So. 3d 433, 2013 Miss. App. LEXIS 224 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 63 (Miss. 2014).

Circuit court correctly found that appellant's post-conviction relief (PCR) motion was procedurally barred as a successive writ under Miss. Code Ann. § 99-39-23(6) because when appellant filed his second PCR motion he failed to produce any evidence that would satisfy any of the exceptions listed in § 99-39-23(6); additionally, the record revealed no evidence that would satisfy the exceptions. Whetstone v. State, 109 So. 3d 616, 2013 Miss. App. LEXIS 120 (Miss. Ct. App. 2013).

Dismissal of an inmate's fifth post-conviction relief motion against the State was proper because the motion was filed over 25 years beyond the applicable 3-year limitations period, and thus was both time-barred under Miss. Code Ann. § 99-39-5(2), and successive-writ barred under Miss. Code Ann. § 99-39-23(6); the inmate failed to show any exceptions. Contrary to inmate's claim, his life sentence had not "expired," and, further, his mere attack on his attorney, without more, was insufficient to circumvent the procedural time-bar or successive-writ bar. Smith v. State, 118 So. 3d 180, 2013 Miss. App. LEXIS 101 (Miss. Ct. App. 2013).

Inmate's post-conviction relief (PCR) motion was properly dismissed as a sucessive writ under Miss. Code Ann. § 99-39-23(6) where: (1) the inmate had previously challenged his conviction and his previous motion was dismissed; (2) although the inmate's first motion was titled a motion to vacate revocation hearing, because it challenged his conviction, it was correctly treated as a PCR motion; and (3) the inmate raised no statutory exception to the successive-writ bar and did not prove a violation of a fundamental right. Sims v. State, 134 So. 3d 317, 2013 Miss. App. LEXIS 102 (Miss. Ct. App. 2013), aff'd, 134 So. 3d 300, 2014 Miss. LEXIS 161 (Miss. 2014).

Although the right to be free from an illegal sentence was a fundamental right not subject to procedural bars, a prisoner's 15-year sentence for sexual battery was not an illegal sentence and the claim could not be used as a "back door" approach to a claim that a guilty plea was not knowingly and voluntarily given; thus, as the prisoner bringing the claim had filed previous postconviction motions, the instant motion was procedurally barred. Sampson v. State, 118 So. 3d 170, 2013 Miss. App. LEXIS 57 (Miss. Ct. App. 2013).

There was no error in a circuit court's ruling that defendant's postconviction relief motion was procedurally barred under Miss. Code Ann. § 99-39-23(6) because the court had previously affirmed the dismissal of defendant's second postconviction relief motion. Pickle v. State, 64 So. 3d 1009, 2010 Miss. App. LEXIS 632 (Miss. Ct. App. 2010), cert. denied, 65 So. 3d 310, 2011 Miss. LEXIS 338 (Miss. 2011).

Inmate's post-conviction relief (PCR) motion was a successive writ because he alleged the same issues in a prior PCR motion, and any additional arguments he raised in the motion could have been raised at trial or previously on appeal. Clay v. State, 168 So. 3d 987, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. 2013), cert. dismissed, 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Dismissal of an inmate's post conviction relief (PCR) motion against the State was proper because it was inmate's second PCR motion and thus was an impermissible successive motion under Miss. Code Ann. § 99-39-23(6); the inmate failed to offer any reason that the successive-writ bar should not apply. Further, there was no merit to the inmate's claims. Williams v. State, 110 So. 3d 840, 2013 Miss. App. LEXIS 165 (Miss. Ct. App. 2013).

Inmate's fourth motion for postconviction relief was an improper successive motion because the inmate's three prior motions had been filed and either dismissed or denied. McGriggs v. State, 117 So. 3d 626, 2012 Miss. App. LEXIS 798 (Miss. Ct. App. 2012), cert. dismissed, 117 So. 3d 330, 2013 Miss. LEXIS 444 (Miss. 2013).

Circuit court did not err in dismissing appellant's second motion for post-conviction relief (PCR), which relied on the newly discovered evidence exception to attempt to circumvent the procedural bar, Miss. Code Ann. § 99-39-23(6), because the motion was successive and presented, at most, conclusory or impeaching evidence, not newly discovered evidence; the court of appeals affirmed the denial of appellant's first PCR motion, and prior to that ruling, appellant filed the second PCR motion. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Because the indictment charging defendant with burglary was legally sufficient, defendant's claims regarding the trial court's jurisdiction, the legality of the sentence, the denial of defendant's motion for reconsideration, and counsel's alleged ineffectiveness lacked merit; therefore, defendant's second petition for postconviction relief was properly denied as successive under Miss. Code Ann. § 99-39-23(6). Martin v. State, 65 So. 3d 882, 2011 Miss. App. LEXIS 404 (Miss. Ct. App. 2011).

There was no error in the circuit court's dismissal of the prisoner's latest postconviction relief motion because it was a successive writ and, as such, was barred pursuant to Miss. Code Ann. § 99-39-23(6) (Supp. 2009). Additionally, he did not assert that newly discovered evidence would have altered his sentence, he did not provide a dispositive intervening decision by the Mississippi Supreme Court or the United States Supreme Court, and he did not argue that biological evidence even existed in the case. Hearron v. State, 68 So. 3d 699, 2011 Miss. App. LEXIS 28 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 411 (Miss. 2011), cert. denied, 566 U.S. 1036, 132 S. Ct. 2714, 183 L. Ed. 2d 72, 2012 U.S. LEXIS 4169 (U.S. 2012).

Trial court did not err in dismissing an inmate's petition for post-conviction collateral relief on the ground that it was procedurally barred as a successive writ under Miss. Code Ann. § 99-39-23(6) because the petition fell outside the three year time limitation under Miss. Code Ann. § 99-39-5(2); the inmate's knowledge after his eighth year in prison that he was serving a "day-for-day" sentence and was not eligible for parole and earned time did not suffice to invoke the newly discovered evidence exception to the time bar and the successive writ bar, §§ 99-39-5(2)(a)(i) and 99-39-23(6), and the inmate's claims of ineffective assistance of counsel and an involuntary guilty plea were sufficient to invoke the fundamental rights exception to the procedural bars. Salter v. State, 64 So. 3d 514, 2010 Miss. App. LEXIS 677 (Miss. Ct. App. 2010), cert. denied, 65 So. 3d 310, 2011 Miss. LEXIS 343 (Miss. 2011).

Prisoner's fourth motion for post-conviction collateral relief was barred by the prohibition against successive writs, Miss. Code Ann. ' 99-39-23(6). Additionally, he could not succeed on a claim of newly discovered evidence because he had pleaded guilty, swearing he was guilty of the murder, and the evidence did not demonstrate his innocence. Johnson v. State, 39 So. 3d 963, 2010 Miss. App. LEXIS 176 (Miss. Ct. App.), cert. dismissed, 49 So. 3d 636, 2010 Miss. LEXIS 527 (Miss. 2010).

Court of appeals decision that a fourth post-conviction relief motion was procedurally barred as an impermissible successive writ was in error where the supreme court incorrectly applied the procedural bar to defendant's three earlier applications because defendant's arguments implicated fundamental due-process concerns. Jackson v. State, 2010 Miss. LEXIS 170 (Miss. Apr. 1, 2010).

In a case in which a pro se state inmate filed a successive petition for post-conviction relief (PCR), in addition to the procedural bar against a successive writ, the inmate's current petition, had it been his first plea for review, would nonetheless still be barred by the three-year statute of limitations in Miss. Code Ann. § 99-39-5(2). He had pled guilty on March 1, 2001 and his current petition for PCR was filed on October 1, 2008, which was well past the time limit granted to file for relief under the Mississippi Uniform Post-Conviction Collateral Relief Act. Glass v. State, 45 So. 3d 1200, 2010 Miss. App. LEXIS 126 (Miss. Ct. App.), cert. denied, 49 So. 3d 636, 2010 Miss. LEXIS 554 (Miss. 2010).

In a post-conviction relief proceeding in which a pro se state inmate had been indicted for capital murder and pled guilty to the reduced charge of murder, in violation of Miss. Code Ann. § 97-3-19(1)(a), the only exception that he alleged allowed him to file a successive writ was the existence of an intervening decision. With regard solely to his proposed unconstitutional life sentence, he argued that the Apprendi decision and the Blakely decision satisfied the intervening-decision exception; however, those decisions did not provide any support for his claim since life was the only sentence available under Miss. Code Ann. § 97-3-21. Glass v. State, 45 So. 3d 1200, 2010 Miss. App. LEXIS 126 (Miss. Ct. App.), cert. denied, 49 So. 3d 636, 2010 Miss. LEXIS 554 (Miss. 2010).

Appellant's third motion for post-conviction relief, which was styled as a petition for habeas corpus relief, was procedurally barred as a successive writ because the petition was appellant's third attempt to receive post-conviction relief; even if appellant's petition was not barred as a successive writ, there was no merit to his claims on appeal. Smith v. State, 29 So. 3d 126, 2010 Miss. App. LEXIS 113 (Miss. Ct. App. 2010).

Circuit court erred in dismissing an inmate's second motion for post-conviction relief as successive-writ barred under Miss. Code Ann. § 99-39-23(6) because the inmate's second motion was taken from a separate and distinct conviction and sentence that followed the circuit court's granting of his first motion for post-conviction relief; while the circuit court purported only to resentence the inmate, the effect of finding a guilty plea involuntary was to vacate both the guilty plea and the sentence, and the circuit court could not set aside the sentence alone. Catchings v. State, 35 So. 3d 552, 2010 Miss. App. LEXIS 30 (Miss. Ct. App. 2010).

Dismissal of appellant's, an inmate's, motion for postconviction relief was appropriate because the motion was barred as a successive writ under Miss. Code Ann. § 99-39-23(6). The inmate failed to appeal the dismissal of his first motion, on August 1, 2007, and the 30-day deadline for the inmate to appeal, which was calculated from the entry date of the August 1, 2007 judgment, had long since passed. Aguirre v. State, 25 So. 3d 1102, 2010 Miss. App. LEXIS 19 (Miss. Ct. App. 2010).

The bar on successive writs did not apply where an inmate's second motion for post-conviction relief was taken from a separate and distinct conviction and sentence that followed the circuit court's granting of his first motion for post-conviction relief. Catchings v. State, 35 So. 3d 552, 2010 Miss. App. LEXIS 30 (Miss. Ct. App. 2010).

Inmate's motion for postconviction relief was barred as a successive writ under Miss. Code Ann. § 99-39-23(6), where the inmate failed to appeal the dismissal of his first motion within the 30-day deadline for the inmate to appeal. Aguirre v. State, 25 So. 3d 1102, 2010 Miss. App. LEXIS 19 (Miss. Ct. App. 2010).

Postconviction relief (PCR) was properly denied because appellant inmate's motion was a successive writ barred by Miss. Code Ann. § 99-39-23(6); although the inmate's earlier motion for reduction of sentence was not styled as a PCR motion, it was treated as such, as the matter raised in it could only be addressed at that time via a motion for post-conviction relief. Hooks v. State, 22 So. 3d 382, 2009 Miss. App. LEXIS 826 (Miss. Ct. App. 2009).

In a case in which a pro se inmate argued that a circuit court improperly found that his second post-conviction relief petition was successive because his first petition did not comply with the Mississippi Uniform Post-Conviction Collateral Relief Act, circuit courts had discretion to consider post-conviction relief petitions that did not comply with Miss. Code Ann. § 99-39-9. The mere technical deficiencies in a post-conviction relief petition did not mandate that it be returned to the inmate. Robinson v. State, 19 So. 3d 140, 2009 Miss. App. LEXIS 649 (Miss. Ct. App. 2009), cert. dismissed, 107 So. 3d 998, 2013 Miss. LEXIS 79 (Miss. 2013).

Dismissal of defendant's motion for postconviction relief was proper because the lower court had previously dismissed two of defendant's motions as successive writs, and defendant failed to demonstrate that his case fell under one of the enumerated exceptions to the successive-writ bar at Miss. Code Ann. § 99-39-23(6). Banks v. State, 37 So. 3d 81, 2009 Miss. App. LEXIS 625 (Miss. Ct. App. 2009), cert. denied, 36 So. 3d 455, 2010 Miss. LEXIS 288 (Miss. 2010).

Inmate's motion for clarification of his sentence was time barred because it was filed more than three years after entry of the judgment of conviction, Miss. Code Ann. § 99-39-5, and it was his third motion for post-conviction relief and as such was procedurally barred as a successive motion under Miss. Code Ann. § 99-39-23. Owens v. State, 17 So. 3d 628, 2009 Miss. App. LEXIS 608 (Miss. Ct. App. 2009).

In a case in which a pro se inmate appealed the circuit court's denial of his post-conviction motion as being barred as a successive writ, the inmate argued unsuccessfully that the enactment of Miss. Unif. Cir. & Cty. R. 7.09 should allow him to overcome the successive-writ bar. He relied on the exception to Miss. Code Ann. § 99-39-23(6); however, since he had pled guilty, he waived the complaints he had with his indictment. Sanders v. State, 34 So. 3d 1200, 2009 Miss. App. LEXIS 618 (Miss. Ct. App. 2009).

Inmate's second post-conviction relief motion regarding the revocation of his suspended sentence was a successive writ and was barred under Miss. Code Ann. § 99-39-232 Means v. State, 43 So. 3d 461, 2009 Miss. App. LEXIS 592 (Miss. Ct. App. 2009), rev'd, 43 So. 3d 438, 2010 Miss. LEXIS 443 (Miss. 2010).

Inmate's motion for post-conviction relief alleging that his sentence was illegal was procedurally barred as an impermissible successive writ, because the inmate had filed an earlier motion for post-conviction relief, and he failed to show that his second motion fell within any of the exceptions in Miss. Code Ann. § 99-39-23(6). Poss v. State, 17 So. 3d 167, 2009 Miss. App. LEXIS 570 (Miss. Ct. App. 2009).

Denial of defendant's petition for reduction of sentence, which followed an unsuccessful motion for postconviction relief, was proper because petition was procedurally barred due to defendant's prior failure to raise his arguments in circuit court, as well as the prohibition against successive motions for postconviction relief found in Miss. Code Ann. § 99-39-23(6). Jefferson v. State, 16 So. 3d 81, 2009 Miss. App. LEXIS 534 (Miss. Ct. App. 2009).

Where appellant pled guilty to two counts of capital murder and two counts of armed robbery in 1979, he filed several motions for post-conviction relief; the circuit court did not err by dismissing his 2007 motion for post-conviction relief as a successive writ under Miss. Code Ann. § 99-39-23(6). Appellant's claim that double jeopardy barred prosecution of his armed robbery convictions was not good cause for an exception to the bar, because appellant delayed thirty years in attacking his armed robbery convictions until he became eligible for parole on his murder convictions. Rowland v. State, 42 So. 3d 545, 2009 Miss. App. LEXIS 310 (Miss. Ct. App. 2009), rev'd, 42 So. 3d 503, 2010 Miss. LEXIS 386 (Miss. 2010).

In a case where an applicant was challenging a habitual offender finding, post-conviction relief was not available based on Miss. Code Ann. § 99-39-23(b) because a request for collateral relief had been filed previously, and no exception was satisfied. The applicant was attempting to challenge a false pretenses conviction that was part of the basis of habitual offender finding, but he had sought collateral relief from that conviction previously in 1993. Dobbs v. State, 18 So. 3d 295, 2009 Miss. App. LEXIS 215 (Miss. Ct. App. 2009).

Prisoner's first motion for postconviction collateral relief was denied by the circuit court on August 12, 1996; because the prisoner failed to show that he fit one of the exceptions listed in Miss. Code Ann. § 99-39-23(6), his subsequent motion was barred as a successive writ. Cooper v. State, 21 So. 3d 674, 2009 Miss. App. LEXIS 203 (Miss. Ct. App.), cert. denied, 20 So. 3d 680, 2009 Miss. LEXIS 554 (Miss. 2009).

Trial court properly denied defendant's second motion for post-conviction relief because it was filed six years after his conviction and time-barred, under Miss. Code Ann. § 99-39-5(2), and because it was barred as a successive writ, under Miss. Code Ann. § 99-39-23(6). Jackson v. State, 19 So. 3d 106, 2009 Miss. App. LEXIS 146 (Miss. Ct. App. 2009).

Pro se motion for post-conviction relief was procedurally barred as time-barred, under Miss. Code Ann. § 99-39-5(2), and as successive-writ barred, under Miss. Code Ann. § 99-39-23(6), because it was filed more than three years after judgment of conviction and because a petitioner's claims were addressed in a prior motion. Mann v. State, 2 So. 3d 743, 2009 Miss. App. LEXIS 45 (Miss. Ct. App. 2009).

Trial court properly denied defendant's second motion for post-conviction relief as a successive writ under Miss. Code Ann. § 99-39-23(6) because defendant asserted the same claim regarding probation revocation in both post-conviction motions; the order denying the first petition for post-conviction relief was a final judgment from which defendant did not file an appeal. Lyons v. State, 990 So. 2d 262, 2008 Miss. App. LEXIS 513 (Miss. Ct. App. 2008).

In an armed robbery case, the petitioner's third motion for post-conviction relief was procedurally barred as a successive writ as it did not fall within any of the exceptions of Miss. Code Ann. § 99-39-23(6), and the State's failure to raise the successive pleadings bar in no way impeded the circuit court's ability to apply the bar; and because the petitioner did not assert that he received an illegal sentence from which he would have appealed had he possessed the requisite knowledge, and because there was no ambiguity in the armed robbery charge, he did not substantially show a violation of a fundamental right that would have excepted these issues from the procedural bar. Flowers v. State, 978 So. 2d 1281, 2008 Miss. App. LEXIS 201 (Miss. Ct. App. 2008).

Trial court properly dismissed the inmate's motion for post-conviction relief as being barred as a successive writ under Miss. Code Ann. § 99-39-23(6) because he already attacked the validity of his two burglary convictions in a previous post-conviction relief motion. In his first motion for post-conviction relief, the inmate incorrectly appealed both of his convictions in one motion instead of two as required by Miss. Code Ann. § 99-39-9(2), but the trial court agreed to hear both appeals rather than requiring two separate motions. In the instant motion, the inmate attacked the same two judgments he had previously addressed in his first post-conviction motion. There was no merit to the inmate's contention that his first post-conviction motion attacked only one burglary conviction and that the instant motion attacked the second conviction. Christie v. State, 996 So. 2d 81, 2008 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 627 (Miss. 2008).

Where appellant was sentenced to life upon his plea of guilty to murder, his third petition for post-conviction relief was barred as a successive writ under Miss. Code Ann. § 99-39-23(6). Berryhill v. State, 970 So. 2d 227, 2007 Miss. App. LEXIS 811 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied when defendant filed the motion outside of the three-year statute of limitations; moreover, defendant's motion was a petition for a successive writ. Avara v. State, 987 So. 2d 1007, 2007 Miss. App. LEXIS 639 (Miss. Ct. App. 2007).

Defendant's request for post-conviction relief was procedurally barred as a successive writ in a case related to sale of a controlled substance because defendant's claims were his third request for post-conviction relief, and defendant did not provide any evidence or facts that would satisfy any of the exceptions to the successive writ bar. Black v. State, 963 So. 2d 47, 2007 Miss. App. LEXIS 526 (Miss. Ct. App. 2007).

Order denying defendant's third request for postconviction relief was upheld where defendant's appeal was untimely under Miss. R. App. P. 2(a)(1); in addition, defendant failed to provide the appellate court with any facts that would satisfy any of the exceptions to the successive writ bar in Miss. Code Ann. § 99-39-23(6). Johnson v. State, 962 So. 2d 87, 2007 Miss. App. LEXIS 459 (Miss. Ct. App. 2007).

Where defendant had already filed one post-conviction relief motion raising the same issues, a successive writ was barred under Miss. Code Ann. § 99-39-23(6); at any rate, his guilty plea waived any speedy trial issue, and defendant was not allowed to recast the issue under the guise of ineffective assistance of counsel. Myers v. State, 976 So. 2d 917, 2007 Miss. App. LEXIS 437 (Miss. Ct. App. 2007), cert. denied, 977 So. 2d 343, 2008 Miss. LEXIS 112 (Miss. 2008).

Because a prior motion for post-conviction relief (PCR) had been denied, a second motion was denied as impermissibly successive under Miss. Code Ann. § 99-39-23(6); defendant did not show any applicable intervening case law or newly discovered evidence that would have excepted his claim from the procedural bar. Riggs v. State, 967 So. 2d 650, 2007 Miss. App. LEXIS 425 (Miss. Ct. App. 2007).

Appeal from the denial of post-conviction relief was not precluded by the successive writ bar in Miss. Code Ann. § 99-39-23(6) because, despite having two judgments on file, the record only contained one motion. Parkman v. State, 953 So. 2d 315, 2007 Miss. App. LEXIS 202 (Miss. Ct. App. 2007).

Second petition for post-conviction relief was properly dismissed because evidence that defendant might have not signed the waiver of arraignment and entry of plea form was not the type of new evidence contemplated by Miss. Code Ann. § 99-39-23(6). Jones v. State, 948 So. 2d 499, 2007 Miss. App. LEXIS 50 (Miss. Ct. App. 2007).

Defendant's third motion for post-conviction relief was properly denied in a capital murder case as a successive writ; because defendant's two previous motions for post-conviction relief had been denied, defendant's successive motion for post-conviction relief was barred under Miss. Code Ann. § 99-39-23(6). Jordan v. State, 935 So. 2d 1083, 2006 Miss. App. LEXIS 178 (Miss. Ct. App. 2006).

Pursuant to Miss. Code Ann. § 99-39-23(6), defendant's first attempt at post-conviction relief was properly denied and was the final judgment; defendant's second attempt was barred as alleged new evidence and was not appropriate under the facts presented as they were known at the time of his first petition for post-conviction relief. Bowie v. State, 949 So. 2d 60, 2006 Miss. App. LEXIS 496 (Miss. Ct. App. 2006), cert. denied, 949 So. 2d 37, 2007 Miss. LEXIS 110 (Miss. 2007).

An inmate's second claim for post-conviction relief was denied because it was time-barred and as a successive petition because the inmate made the same claims in the second petition that he made in the first claim. Gatlin v. State, 932 So. 2d 67, 2006 Miss. App. LEXIS 479 (Miss. Ct. App. 2006).

Motion for post-conviction relief was denied because it was a successive writ under Miss. Code Ann. § 99-39-23(6) due to previous decisions in 1986, 1987, 1988, and 1997; the inmate failed to show that there were any intervening cases that permitted a hearing on the motion, as the inmate merely cited cases without accompanying argument. Wildee v. State, 930 So. 2d 478, 2006 Miss. App. LEXIS 421 (Miss. Ct. App. 2006).

Relief under Miss. Code Ann. § 99-39-5(2) and Miss. Code Ann. § 99-39-23(6) was properly denied because the exceptions to the procedural bars did not apply where a prisoner's failure to understand the law regarding jury instructions or effective assistance of counsel, until he later conducted research regarding his case, did not constitute newly discovered evidence and did not invoke the plain error rule. Pickle v. State, 942 So. 2d 243, 2006 Miss. App. LEXIS 398 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 721 (Miss. 2006).

Defendant's post-conviction petition was dismissed where he waived his right to a jury trial and had no standing to claim his right to a jury trial was violated, and the issue was barred as a successive writ; defendant did not prove that his claims were not barred as successive writs under Miss. Code Ann. § 99-39-23(7). Carbin v. State, 942 So. 2d 231, 2006 Miss. App. LEXIS 377 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 765 (Miss. 2006), cert. denied, 550 U.S. 971, 127 S. Ct. 2880, 167 L. Ed. 2d 1157, 2007 U.S. LEXIS 6145 (U.S. 2007).

Following the denial of defendant's first motion for post-conviction relief from his sentences for two DUI convictions, he filed a motion to correct an illegal sentence; the second motion was treated as a motion for post-conviction relief and denied as a successive writ under Miss. Code Ann. § 99-39-23(6). Smith v. State, 923 So. 2d 241, 2006 Miss. App. LEXIS 154 (Miss. Ct. App. 2006).

Defendant's second motion for postconviction relief was properly dismissed pursuant to Miss. Code Ann. § 99-39-23(6) because no statutory exception was applicable; there was no intervening decision of either the Mississippi Supreme Court or the United States Supreme Court that would have a bearing on the outcome of the case, there was no newly discovered evidence, nor did he claim that his sentence had expired or that his probation, parole, or conditional release had been unlawfully revoked. Gaston v. State, 922 So. 2d 841, 2006 Miss. App. LEXIS 140 (Miss. Ct. App. 2006).

Trial court properly dismissed an inmate's motion for post-conviction relief as the inmate had previously filed a motion for post-conviction relief that was denied; thus, the present motion was procedurally barred pursuant to Miss. Code Ann. § 99-39-23(6). Arnold v. State, 912 So. 2d 202, 2005 Miss. App. LEXIS 703 (Miss. Ct. App. 2005).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief as the motion was the inmate's second motion for post-conviction relief and therefore was barred as a successive writ. Keyes v. State, 918 So. 2d 76, 2005 Miss. App. LEXIS 997 (Miss. Ct. App. 2005).

Appellate court affirmed the denial of the inmate's successive motions for post-conviction relief as the issues raised in the successive motions had previously been raised and ruled upon in the inmate's first motion and under Miss. Code Ann. § 99-39-23(6), the denial of the first motion was a bar to successive motions. Page v. State, 918 So. 2d 853, 2005 Miss. App. LEXIS 747 (Miss. Ct. App. 2005).

Appellate court affirmed the denial of defendant's petition for post-conviction relief as defendant had previously filed a petition for post-conviction relief that had been denied on appeal; thus, this appeal was denied as a successive writ under Miss. Code Ann. § 99-39-23(6). Laushaw v. State, 926 So. 2d 240, 2005 Miss. App. LEXIS 972 (Miss. Ct. App. 2005).

In defendant's appeal from the denial of his motion to correct the record regarding his 1975 aggravated assault conviction, even if defendant qualified for an exemption from the three-year bar under Miss. Code Ann. § 99-39-5 because of newly discovered evidence, his application would still have been barred by the successive writ bar provided in Miss. Code Ann. § 99-39-23(6). Since defendant had filed a prior motion to correct the record, his current application constituted a successive writ. Smith v. State, 918 So. 2d 850, 2005 Miss. App. LEXIS 725 (Miss. Ct. App. 2005).

When the trial court dismissed the inmate's first motion for post-conviction relief, that dismissal barred further pursuit of post-conviction relief in the trial court. Accordingly, the inmate was barred from filing his second motion for post-conviction relief unless he fit into two narrow exceptions; because the record did not contain a copy of the inmate's motion for relief, the appellate court had to assume that his petition did not meet the statutory exceptions for successive motions for post-conviction relief. Runnels v. State, 919 So. 2d 1072, 2005 Miss. App. LEXIS 459 (Miss. Ct. App. 2005).

Issues raised in defendant's second motion for post-conviction collateral relief (PCR) under consideration were essentially the same as were considered by the courts in the his first PCR and appeal. Thus, his claims were procedurally barred based on the successive writ bar and res judicata; in addition, his second PCR motion was filed more than 10 years after his initial guilty plea and was procedurally barred, and because he filed his second PCR motion in the circuit court without first filing a motion with the supreme court for leave to file in the circuit court the trial court was without jurisdiction to consider said motion. Sykes v. State, 919 So. 2d 1064, 2005 Miss. App. LEXIS 458 (Miss. Ct. App. 2005).

Defendant's second petition for postconviction relief alleging that the revocation of his intensive supervision was illegal and that he was denied the effective assistance of counsel was barred by operation of law as a successive motion under Miss. Code Ann. § 99-39-23(6). Taylor v. State, 919 So. 2d 209, 2005 Miss. App. LEXIS 420 (Miss. Ct. App. 2005).

Where appellant filed two prior motions for post-conviction relief (PCR) that had been dismissed, the third PCR was barred as a successive writ. Weathersby v. State, 919 So. 2d 262, 2005 Miss. App. LEXIS 427 (Miss. Ct. App. 2005).

Inmate's motions for post-conviction relief were denied as successive and time barred because the inmate failed to show that any exceptions applied; a letter from a district attorney recommending a denial of parole did not constitute newly discovered evidence because it did not exist at the time of trial. Garlotte v. State, 915 So. 2d 460, 2005 Miss. App. LEXIS 280 (Miss. Ct. App.), cert. denied, 921 So. 2d 1279, 2005 Miss. LEXIS 769 (Miss. 2005).

Where appellant filed a motion for post-conviction relief that was denied, and then filed a second motion for postconviction relief, the circuit court properly dismissed this motion as a successive writ. Pearson v. State, 906 So. 2d 788, 2004 Miss. App. LEXIS 1139 (Miss. Ct. App. 2004).

Inmate's first motion for post-conviction relief was denied on February 16, 2001; thus, the inmate's second petition for post-conviction relief was properly dismissed on August 5, 2003, and in accordance with Miss. Code Ann. § 99-39-23(6), his appeal was barred as a successive writ. Black v. State, 902 So. 2d 612, 2004 Miss. App. LEXIS 1076 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273, 2005 Miss. LEXIS 333 (Miss. 2005).

Bar against successive filings applies not only to issues actually determined in a previous postconviction relief proceeding, but to those issues that could have been raised. Jones v. State, 897 So. 2d 195, 2004 Miss. App. LEXIS 954 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 208 (Miss. 2005).

Where an inmate filed a second motion for postconviction relief following his pleas of guilty to murder and armed robbery, the affidavit of another prison stating that someone other than defendant had committed the crimes was not newly discovered evidence to justify a successive postconviction relief motion. Surely, the inmate knew whether he was guilty at the time he entered his plea. Jones v. State, 897 So. 2d 195, 2004 Miss. App. LEXIS 954 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 208 (Miss. 2005).

Petitioner's second motion for post-conviction relief was properly denied as an impermissible second filing for relief under Miss. Code Ann. § 99-39-23(6) because petitioner's appeal from the denial of the first motion for postconviction relief was denied as untimely, and the decision denying the first petition had been left untouched. Pinson v. State, 881 So. 2d 348, 2004 Miss. App. LEXIS 860 (Miss. Ct. App. 2004).

Where an inmate filed a second petition to clarify sentence, and failed to demonstrate why the evidence that purportedly had cleared him of the crimes to which he had pleaded guilty was not available at the time of trial, the appellate court affirmed the denial of the inmate's petition for postconviction relief. Donnelly v. State, 887 So. 2d 833, 2004 Miss. App. LEXIS 881 (Miss. Ct. App. 2004).

Petitioner was properly denied post-conviction relief, because his petition was successive, as the record clearly indicated that petitioner had filed such a petition in 1993; the Supreme Court upheld the denial; petitioner failed to raise facts requiring consideration of the exceptions to the bar against successive petitions. Truitt v. State, 878 So. 2d 244, 2004 Miss. App. LEXIS 399 (Miss. Ct. App. 2004).

Defendant's issues were procedurally barred for the failure to: (1) timely appeal, and (2) as a successive writ. On at least two occasions, in June 2002 and September 2002, defendant filed petitions requesting relief which could have been granted within the purview of the Mississippi Uniform Post-Conviction Collateral Relief Act pursuant to Miss. Code Ann. § 99-39-5. Those petitions for relief were denied and no appeals were taken, and the exceptions under Miss. Code Ann. § 99-39-23(6), allowing for the filing of a successive writ, did not apply. Stone v. State, 872 So. 2d 87, 2004 Miss. App. LEXIS 375 (Miss. Ct. App. 2004).

Even treating an inmate's appeal as an appeal from an order denying his second motion for post-conviction relief, the dismissal of the motion was affirmed because the filing of a second motion for second post-conviction relief motion was barred by Miss. Code Ann. § 99-39-23(6). Torns v. State, 866 So. 2d 486, 2003 Miss. App. LEXIS 1115 (Miss. Ct. App. 2003).

Inmate's motion for post-conviction relief was barred under Miss. Code Ann. § 99-39-23(6) because it was not inmate's first motion for post-conviction relief. Skinner v. State, 864 So. 2d 298, 2003 Miss. App. LEXIS 964 (Miss. Ct. App. 2003).

Where defendant's post-conviction motion was successive under Miss. Code Ann. § 99-39-23(6) and was not preserved by a proper objection, the alleged mistake was clearly discoverable at sentencing as required by Miss. Code Ann. § 99-39-5(2), and the appeal was not properly supported because no part of Fed. R. Crim. P. 11 stated what defendant claimed on appeal; the motion was properly dismissed. McGriggs v. State, 877 So. 2d 447, 2003 Miss. App. LEXIS 993 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 855 (Miss. 2004).

Defendant's second motion to correct a sentencing order was a successive Post-Conviction Collateral Relief Act motion barred by Miss. Code Ann. § 99-39-23, but as his motion involved a fundamental right, to be free of an illegal sentence, based on the trial court's allegedly exceeding its authority in sentencing him – the appellate court waived the procedural bar of § 99-39-23. Norwood v. State, 846 So. 2d 1048, 2003 Miss. App. LEXIS 472 (Miss. Ct. App. 2003).

Lacking a demonstration that the facts in defendant's third motion to withdraw his guilty plea were excepted from the procedural bar for successive writs, the trial court did not err when it denied him relief and dismissed his motion. Field v. State, 856 So. 2d 492, 2003 Miss. App. LEXIS 330 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 667 (Miss. 2003).

Defendant's petition seeking post-conviction relief from a conviction of manslaughter and aggravated assault entered upon defendant's guilty pleas was barred under either Miss. Code Ann. § 99-39-23 in a successive petition or under Miss. Code Ann. § 99-39-5 because the petition was not filed within three years of the conviction. Green v. State, 839 So. 2d 573, 2003 Miss. App. LEXIS 155 (Miss. Ct. App. 2003).

The Mississippi Post-Conviction Collateral Relief Act supplants prior statutory and rule versions of the writ of habeas corpus and, with a a few exceptions, any order dismissing a prisoner's motion or otherwise denying relief is a final judgment and a bar to a second or successive motion. Scott v. State, 817 So. 2d 642, 2002 Miss. App. LEXIS 306 (Miss. Ct. App. 2002).

Defendant's allegation that he was prosecuted under a forged indictment raised a state constitutional violation which prevented his motion from being barred as a successive post-conviction relief motion under Miss. Code Ann. § 99-39-23(6). Gray v. State, 819 So. 2d 542, 2001 Miss. App. LEXIS 497 (Miss. Ct. App. 2001).

The defendant's claims that (1) he was coerced into pleading guilty by the prosecutor's off-the-record threat to indict him as a habitual offender if he did not so plead and that (2) his counsel was ineffective because the state's alleged failure to provide a speedy trial was not raised were not within any of the statutory exceptions and, therefore, the trial judge did not err in dismissing a successive motion for post-conviction relief. Smith v. State, 773 So. 2d 410, 2000 Miss. App. LEXIS 585 (Miss. Ct. App. 2000).

The defendant was barred from bringing a successive motion where he previously had brought an initial motion for post-conviction relief that was considered and denied by the circuit court and no timely appeal was taken from that order. Wilson v. State, 772 So. 2d 1093, 2000 Miss. App. LEXIS 550 (Miss. Ct. App. 2000).

The defendant failed to demonstrate that he fell within one of the exceptions of the successive motion bar where he simply argued the merit of the trial court's summary denial of his second petition without regard to the procedural bar. Tate

v. State, 806 So. 2d 276, 2000 Miss. App. LEXIS 370 (Miss. Ct. App. 2000).

A petition for postconviction relief was barred as a successive writ where the petitioner filed a motion for out of time appeal, which motion was considered and denied by the trial court, no timely appeal was taken from that order, and the petitioner failed to demonstrate the existence of any of the enumerated exceptions. Maston v. State, 750 So. 2d 1234, 1999 Miss. LEXIS 341 (Miss. 1999).

The defendant was procedurally barred on his successive petition for post conviction relief under subsection (6) of this section where it appeared that he raised the same arguments on appeal as those raised in his prior petition for post conviction relief. Retherford v. State, 749 So. 2d 269, 1999 Miss. App. LEXIS 550 (Miss. Ct. App. 1999).

The exceptions under subsection (6) of this section only allow the filing of a successive writ if the argument presented within the writ falls under one of the exceptions and has not been previously argued and a decision rendered on the merits by the trial court. Retherford v. State, 749 So. 2d 269, 1999 Miss. App. LEXIS 550 (Miss. Ct. App. 1999).

A trial court correctly denied, as a successive writ, a defendant's second motion for postconviction relief, even though the second pleading was denominated as a "Petition for Habeas Corpus Post-Conviction Relief," since the Post-Conviction Collateral Relief Act effectively supplanted the prior statutory and rule versions of the writ of habeas corpus so that the defendant's habeas petition would be treated as a petition for postconviction relief filed pursuant to the Post-Conviction Relief Act. Grubb v. State, 584 So. 2d 786, 1991 Miss. LEXIS 506 (Miss. 1991).

9. Ineffective assistance of counsel.

There were no grounds for reversing the determination that trial counsel provided adequate representation at sentencing because appellant failed to bear his burden of persuading the trial judge by a preponderance of the evidence that his trial counsel failed to render constitutionally adequate performance; at most, appellant's post-conviction counsel presented an alternative reasonable strategy but failed to show that trial counsel's strategy was not reasonable; Walker v. State, — So. 3d —, 2020 Miss. LEXIS 263 (Miss. June 25, 2020).

Circuit court did not err when it dismissed appellant's third post-conviction relief motion without an evidentiary hearing because appellant's claim of ineffective assistance of counsel was not "procedurally alive" since appellant never went beyond a mere assertion, which was not enough. Porter v. State, 281 So. 3d 935, 2019 Miss. App. LEXIS 133 (Miss. Ct. App. 2019).

Circuit court properly dismissed appellant's motion for post-conviction relief because he did not raise any claim that would overcome the procedural bars; nothing in the record support appellant's claim of ineffective assistance of counsel because there was a sufficient factual basis for his guilty plea, and in entering his guilty plea, appellant expressed to the circuit court that he was satisfied with his counsel's performance. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Because appellant brought a claim of ineffective assistance of counsel in his first post-conviction relief motion, the claim was barred by res judicata. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Defendant failed to show ineffective assistance of counsel because defendant's claim for ineffective assistance of counsel rested entirely on defendant's own bare assertions, as defendant provided no additional proof or affidavit to support defendant's claim that the performance of defendant's attorneys was deficient. Moreover, defendant informed the court during defendant's plea that defendant was satisfied with the advice and representation and assistance provided by defendant's attorneys. Burns v. State, 187 So. 3d 1080, 2016 Miss. App. LEXIS 138 (Miss. Ct. App. 2016).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant failed to show how his counsel was deficient and how that prejudiced his defense, and the record did not support any of appellant's allegations of incompetence; the guilty plea petition and transcript of the plea hearing showed that counsel was competent and gave reasonable professional assistance during all stages of the proceedings, and appellant did not submit affidavits supporting his allegations but only offered bare assertions of ineffectiveness, which was insufficient. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

Denial of appellant's, an inmate's, motion for postconviction relief was appropriate because he failed meet his burden of proof under Miss. Code Ann. § Miss. Code Ann. § 99-39-23(7) in showing that he received the ineffective assistance of counsel at trial and on direct appeal. The record demonstrated that the inmate's counsel investigated the case and was prepared for the trial; none of counsel's alleged errors or deficiencies substantially affected the outcome of the inmate's trial. Robert v. State, 2009 Miss. App. LEXIS 747 (Miss. Ct. App. Nov. 3, 2009), op. withdrawn, sub. op., 52 So. 3d 1233, 2011 Miss. App. LEXIS 45 (Miss. Ct. App. 2011).

Petitioner was entitled to post-conviction relief based upon ineffective assistance of counsel where counsel failed to investigate the details behind petitioner's head injuries or to present any evidence during the sentencing phase of petitioner's capital trial regarding the extent of those injuries and any long-term permanent damage. Doss v. State, 19 So. 3d 690, 2009 Miss. LEXIS 510 (Miss. 2009).

Where appellant pleaded guilty to two counts of sexual battery, there was a factual basis for his plea because appellant told the trial court that he had committed the crimes; appellant failed to prove that his trial counsel was ineffective for urging him to plead guilty to defective indictments. The fact that appellant pleaded guilty because he feared a harsher sentence did not render his plea involuntary; the trial court properly dismissed his petition for post-conviction relief, because he failed to prove by a preponderance of the evidence that he was entitled to relief under Miss. Code Ann. § 99-39-23(7). Kimble v. State, 983 So. 2d 1069, 2008 Miss. App. LEXIS 116 (Miss. Ct. App. 2008).

Denial of defendant's motion for postconviction relief was proper because he failed to meet his burden of proof under Miss. Code Ann. § 99-39-23(7) in that he failed to show that his guilty plea was not knowing and voluntary and that his counsel was ineffective; the trial court had responsibility to assess defendant's credibility and found no deficiency. Loden v. State, 971 So. 2d 548, 2007 Miss. LEXIS 558 (Miss. 2007), cert. denied, 555 U.S. 831, 129 S. Ct. 45, 172 L. Ed. 2d 51, 2008 U.S. LEXIS 6568 (U.S. 2008).

Inmate was not able to establish that his plea was involuntary as the inmate admitted the charges before him, and the inmate did not establish that his attorney was ineffective. Majors v. State, 946 So. 2d 369, 2006 Miss. App. LEXIS 199 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 50 (Miss. 2007).

Defendant raised a claim of ineffective assistance of counsel which required a full evidentiary hearing where there was evidence that the victim's girlfriend poured boiling water on him, along with defendant's testimony that someone else committed this act, which was enough to raise a reasonable doubt that defendant committed the offense; this evidence may have changed the outcome had the parties gone forward. Hannah v. State, 943 So. 2d 20, 2006 Miss. LEXIS 578 (Miss. 2006).

Denial of inmate's petition for postconviction relief was proper where, by pleading guilty, he waived his right to appeal based upon the indictment. Further, he failed to show that his attorney's advice and performance met the Strickland test; the advice was not erroneous and the inmate failed to show any prejudice resulting from such advice. Bilbo v. State, 881 So. 2d 966, 2004 Miss. App. LEXIS 897 (Miss. Ct. App. 2004).

Record demonstrated that trial counsel's performance was not deficient where trial counsel acted according to defendant's instructions and his efforts to investigate potential mitigation evidence were thwarted by uncooperative witnesses; defendant also failed to prove there was a reasonable probability that the outcome would have been different. Burns v. State, 879 So. 2d 1000, 2004 Miss. LEXIS 722 (Miss. 2004).

To demonstrate that he was entitled to out-of-time appeal, defendant was required to show by preponderance of the evidence that he asked his attorney to file appeal within time limit for doing so and that through no fault of defendant's, his attorney failed to file appeal. Osborn v. State, 695 So. 2d 570, 1997 Miss. LEXIS 149 (Miss. 1997).

Counsel was not ineffective in failing to present, during sentencing phase of capital murder prosecution, expert evidence regarding defendant's mental illness, given other evidence of defendant's mental illness, fact that mental illness was not the sole mitigating circumstance presented, and fact that attorney's failure to call expert witnesses did not result from ignorance of the law. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

Counsel was not ineffective in failing to conduct more extensive voir dire, where any further questions would have been redundant in light of questions already asked by court and by prosecutor. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

Counsel was not ineffective in failing to request lesser-included offense instruction which was not warranted by the evidence. Conner v. State, 684 So. 2d 608, 1996 Miss. LEXIS 296 (Miss. 1996).

A postconviction relief petitioner, who is seeking to overturn a conviction or sentence on the grounds of ineffective assistance of counsel, must demonstrate factual proof by a preponderance of the evidence of an identifiable lapse by counsel and of some actual adverse impact on the fairness of the trial resulting from that lapse. State v. Tokman, 564 So. 2d 1339, 1990 Miss. LEXIS 232 (Miss. 1990).

10. Habeas corpus.

A petitioner's petition for a writ of habeas corpus would be treated as a motion under § 99-39-5(1)(g), which authorizes a postconviction motion in the nature of collateral review by the petitioner, since she was in custody under a Mississippi conviction and claimed that she was "unlawfully held in custody." Although the petitioner was convicted in 1981, and the conviction was affirmed on direct appeal in 1983, the substantive portions of the Post-Conviction Relief Act, which became effective April 17, 1984, were applicable to the petition. Furthermore, the waiver and procedural bar provisions of the Act were applicable even though the petitioner was tried and convicted prior to the effective date of the Act. State v. Read, 544 So. 2d 810, 1989 Miss. LEXIS 251 (Miss. 1989).

11. Relief denied.

Regardless of whether some or all of appellant's evidence was "new," the trial court considered all of the evidence, and its finding that it would not probably produce a different result in a new trial was not clearly erroneous, and it properly denied appellant's post-conviction relief (PRC) motion; with respect to whether short falls could cause fatal injuries, the testimony at the PCR hearing was not materially different from the trial testimony. Shelby v. State, — So. 3d —, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. Aug. 4, 2020).

Trial court did not clearly err by finding that the testimony of appellant's experts would not probably produce a different result because the evidence at the post-conviction relief hearing indicated that a majority of practicing physicians continue to accept "shaken baby syndrome" (SBS) or abusive head trauma (AHT) as valid diagnoses; the "debate" and "difference of opinion" regarding SBS and AHT existed at the time of Shelby's trial. Shelby v. State, — So. 3d —, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. Aug. 4, 2020).

Circuit court properly dismissed appellant's motion for post-conviction relief because he did not raise any claim that would overcome the procedural bars; appellant's claim that he was not advise of his right to confront witnesses and his right against self-incrimination did not constitute an exception to the bars because appellant indicated that he understood he would be giving up his right to a trial by jury and that he was not threatened or intimidated into entering his guilty plea. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Appellant's claim that there was no factual basis for his guilty plea was without merit and was subject to the procedural bars because appellant admitted to all relevant facts, was apprised of the consequences of his guilty plea, and pleaded guilty. Boyd v. State, 253 So. 3d 933, 2018 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 252 So. 3d 597, 2018 Miss. LEXIS 397 (Miss. 2018).

Because appellant suffered no prejudice from an illegally lenient sentence, he could not reap the benefits of that sentence and claim in his motion for postconviction relief to have been prejudiced as a result. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Trial court erred in finding that appellant violated the terms of his probation for failure to pay courts costs because there were no facts and circumstances that established he more likely than not violated any of the other terms of his post-release supervision; since the trial court did not inquire as to the reason appellant had not paid his court costs, his revocation could not be legally predicated on his failure to pay those costs, as he could have been financially unable to do so. Gray v. State, 269 So. 3d 331, 2018 Miss. App. LEXIS 185 (Miss. Ct. App. 2018).

Petitioner failed to prove beyond a preponderance of the evidence that a witness's recantation of his trial testimony entitled petitioner to a new trial. Because the witness's recanted testimony failed to refute the corroborated testimony he gave during petitioner's trial, the trial court properly denied petitioner's motion for postconviction relief. James v. State, 220 So. 3d 989, 2016 Miss. App. LEXIS 805 (Miss. Ct. App. 2016), cert. denied, 220 So. 3d 979, 2017 Miss. LEXIS 281 (Miss. 2017).

Trial court did not err in dismissing appellant's motion for postconviction relief because appellant was not denied his right to a speedy trial; a valid guilty plea operated as a waiver of the right to a speedy trial, and explained the majority of the delay was due to defendant firing his counsel and needing time to hire new counsel, and his desire for a mental evaluation. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Trial court did not err in dismissing appellant's motion for postconviction relief because the indictment was not defective for failing to allege the essential elements of sexual battery of a child under fourteen years old when the charged offense in the indictment tracked the language set forth in the statute; the element of consent is not an essential element of the charged crime. Carter v. State, 204 So. 3d 791, 2016 Miss. App. LEXIS 762 (Miss. Ct. App. 2016).

Trial court did not abuse its discretion in denying appellant's postconviction relief motion because the witness's testimony did not constitute newly discovered evidence to establish a claim for relief; issues of the victim's credibility and motives were examined by the defense on cross-examination, and as a result, testimony from the witness that appellant was "set up" would probably not produce a different result or verdict in the new trial. Kidd v. State, 221 So. 3d 1041, 2016 Miss. App. LEXIS 719 (Miss. Ct. App. 2016), cert. denied, 220 So. 3d 977, 2017 Miss. LEXIS 250 (Miss. 2017).

Circuit court properly dismissed petitioner's motion for postconviction relief because petitioner waived his right to a speedy trial by entering a plea of guilty. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

Circuit court properly denied petitioner's motion for postconviction relief because petitioner's trial attorney informed petitioner that by entering his guilty plea he would not be eligible for parole; the circuit court found the attorney's testimony given at the evidentiary hearing to be credible, andit assessments of credibility as the trier of fact were not clearly erroneous. Jackson v. State, 192 So. 3d 1143, 2016 Miss. App. LEXIS 370 (Miss. Ct. App. 2016).

Circuit court properly denied petitioner's motion for postconviction relief because the criminal informations were not fatally defective; petitioner was not eligible for parole because he pleaded guilty to possession of a controlled substance, cocaine, with intent to distribute, with a firearm enhancement. Jackson v. State, 192 So. 3d 1143, 2016 Miss. App. LEXIS 370 (Miss. Ct. App. 2016).

Circuit court properly denied petitioner's motion for postconviction relief because the criminal informations were not fatally defective; although the amount of cocaine was not listed in the criminal information, there was no requirement that the quantity of cocaine be listed, and petitioner was not charged, convicted, or sentenced for drug trafficking. Jackson v. State, 192 So. 3d 1143, 2016 Miss. App. LEXIS 370 (Miss. Ct. App. 2016).

There was no firsthand testimony that anyone actually saw another person at the residence in question or that his DNA was found on the scene on the day of the crime, and the rejection of petitioner's newly discovered evidence claim was affirmed. Watkins v. State, 170 So. 3d 582, 2014 Miss. App. LEXIS 631 (Miss. Ct. App. 2014), cert. denied, 163 So. 3d 301, 2015 Miss. LEXIS 301 (Miss. 2015).

Circuit court thoroughly questioned petitioner during the plea hearing, and the fact that petitioner felt some pressure to plead guilty after discussing the offer with his attorney was insufficient to render his pleas involuntary, plus there was a sufficient factual basis for his pleas to sexual battery and felony child, given the indictment, the statement of the prosecutor, the incorporated witness testimony, and petitoner's admissions; the circuit court did not clearly err in finding that petitioner failed to meet his burden to prove entitlement to post-conviction relief. Watkins v. State, 170 So. 3d 582, 2014 Miss. App. LEXIS 631 (Miss. Ct. App. 2014), cert. denied, 163 So. 3d 301, 2015 Miss. LEXIS 301 (Miss. 2015).

Circuit judge did not clearly err in finding defendant's felony-eluding pleas were voluntary because defendant did not prove by a preponderance of evidence that the guilty pleas were involuntary. Furthermore, the judge developed a record, at the hearing, which probed defendant's awareness of the proceedings and consequences of defendant's guilty pleas, which took defendant's assertion of recent drug use into account. Norris v. State, 162 So. 3d 833, 2014 Miss. App. LEXIS 502 (Miss. Ct. App. 2014).

Post-conviction relief court properly denied appellant's request for a new trial based on evidence that police officers involved in the case allegedly told a juror about appellant's probable sentence if convicted, as the court concluded that the juror lacked credibility and discounted his uncorroborated testimony. Roach v. State, 116 So. 3d 126, 2013 Miss. LEXIS 348 (Miss. 2013).

Juror's failure to disclose that she was the fourth cousin of a law enforcement officer allegedly involved in the inmate's arrest did not entitle the inmate to post-conviction relief, because the inmate offered no evidence of the officer's actual involvement in the investigation, the juror testified that she had never discussed the case with the officer, and the inmate's attorney did not challenge, either peremptorily or for cause, two jurors who disclosed that their brother-in-laws were employed by law enforcement. Magee v. State, 124 So. 3d 71, 2012 Miss. App. LEXIS 817 (Miss. Ct. App. 2012), aff'd, 124 So. 3d 64, 2013 Miss. LEXIS 562 (Miss. 2013).

Circuit court did not err in dismissing appellant's second motion for post-conviction relief (PCR), which relied on the newly discovered evidence exception to attempt to circumvent the procedural bar, Miss. Code Ann. § 99-39-23(6), because even assuming appellant's lawyer withheld a police report and that it was not reasonably discoverable before he entered his plea, the complained-of omission was immaterial to appellant's resulting guilty plea; at most it was impeachment evidence. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Circuit court did not err in dismissing appellant's second motion for post-conviction relief (PCR), which relied on the newly discovered evidence exception to attempt to circumvent the procedural bar, Miss. Code Ann. § 99-39-23(6), because appellant was procedurally barred from his discrepancy-based attack; the court of appeals had previously affirmed the denial of appellant's attack on the validity of his guilty plea. Russell v. State, 73 So. 3d 542, 2011 Miss. App. LEXIS 327 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant sentence and fine for the sale of marijuana under Miss. Code Ann. § 41-29-139 did not violate the statutory maximum and was not illegal; the trial court had no discretion due to the effect of Miss. Code Ann. § 99-19-81, and accordingly, appellant received the maximum sentence and fine for the offense without eligibility for parole or probation under § 99-19-81, and the sentence was doubled under the Uniform Controlled Substances Act, Miss. Code Ann. § 41-29-147. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant failed to offer proof that the internal correction on the indictment charging him with the sale of cocaine was made after the grand jury approved the indictment, and the two offenses at the top of the indictment with the correct controlled substance of marijuana were typed in after the grand jury's approval; the indictment only had an internal inconsistency and did not contain the wrong controlled substance throughout. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

In a case in which a pro se state inmate appealed a circuit court's dismissal of his petition for post-conviction relief (PCR), the circuit court properly treated the petition, which was styled as a "Petition to Clarify Sentence," as a petition for PCR, and it was barred as a successive writ. Johnson v. State, 31 So. 3d 647, 2010 Miss. App. LEXIS 139 (Miss. Ct. App. 2010).

Inmate was not entitled to post-conviction relief because neither of his sentences exceeded the maximum sentences allowed by statute, neither failed to constitute an illegal sentence, and neither had expired. The inmate's sentences did not fall within any exception to the procedural bars for post-conviction relief petitions under Miss. Code Ann. §§ 99-39-23(6) or 99-39-5(2). Runnels v. State, 37 So. 3d 684, 2010 Miss. App. LEXIS 63 (Miss. Ct. App.), cert. dismissed, 42 So. 3d 24, 2010 Miss. LEXIS 456 (Miss. 2010).

In defendant's motion for post-conviction relief, defendant failed to meet his burden of proof under Miss. Code Ann. § 99-39-23(7) to show that his guilty plea to the charge of culpable-negligence manslaughter was involuntary because after he was charged, he executed a sworn waiver of indictment and entered a guilty plea; there also no support in the record supporting his allegation. Blackmore v. State, 988 So. 2d 393, 2008 Miss. App. LEXIS 421 (Miss. Ct. App. 2008).

Defendant, at the time he pleaded guilty, was fully informed that the only available sentence for the crime of murder was life imprisonment, and the record reflected that this was a favorable arrangement for defendant, who was indicted for capital murder and avoided eligibility for the death penalty by pleading guilty to murder; the circuit court's finding that defendant's guilty plea was voluntary was not clearly erroneous. Watts v. State, 981 So. 2d 1034, 2008 Miss. App. LEXIS 272 (Miss. Ct. App. 2008).

Inmate's post-conviction relief petition challenging his 1979 convictions was properly denied because the petition was time barred under Miss. Code Ann. § 99-39-5(2) and did not fit into any exception to the time bar, and further the inmate's petition was not properly before the trial court as he had long since completed his Mississippi sentences and thus did not meet the custody requirement of Miss. Code Ann. § 99-39-5(1); thus, the inmate did not prove by a preponderance of the evidence that he was entitled to relief under Miss. Code Ann. § 99-39-23(7). Smith v. State, 964 So. 2d 1215, 2007 Miss. App. LEXIS 620 (Miss. Ct. App. 2007).

Trial court properly dismissed petitioner's post-conviction motion without an evidentiary hearing where petitioner failed to satisfy the requirements of Miss. Code Ann. § 99-39-23(7) by proving by a preponderance of the evidence that her guilty plea to sexual battery was involuntary; petitioner stated to the trial court that she was pleading guilty "because she was an accomplice." Staggs v. State, 960 So. 2d 563, 2007 Miss. App. LEXIS 9 (Miss. Ct.

App.), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 413 (Miss. 2007).

Order summarily dismissing petitioner's motion for post-conviction relief was upheld where his appeal from his motion before the trial court was procedurally barred as a second and subsequent filing under Miss. Code Ann. § 99-39-23(6). Stewart v. State, 938 So. 2d 344, 2006 Miss. App. LEXIS 694 (Miss. Ct. App. 2006).

Denial of the inmate's second motion for post-conviction relief was appropriate pursuant to Miss. Code Ann. § 99-39-23(6) since he was required to bring all of his known claims in his first motion for post-conviction relief and he failed to do so. Freshwater v. State, 914 So. 2d 328, 2005 Miss. App. LEXIS 804 (Miss. Ct. App. 2005).

Denial of postconviction relief was affirmed because the inmate's claims were contradicted by the record of the plea hearing, when the trial court took great care to ascertain that the inmate had the ability to understand the proceedings, to ascertain that the inmate knew the possible sentence ranges, to ascertain that the inmate knew and understood the rights that he would give up by pleading guilty, to ascertain that he had received adequate counsel, and to ascertain that there was a factual basis for each plea. Bell v. State, 909 So. 2d 103, 2005 Miss. App. LEXIS 398 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR.

Adequacy of defense counsel's representation of criminal client regarding post-plea remedies. 13 A.L.R.4th 533.

Adequacy of defense counsel's representation of criminal client regarding appellate and postconviction remedies. 15 A.L.R.4th 582.

Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

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Accused's right, under Federal Constitution's Sixth Amendment, to compulsory process for obtaining witnesses in accused's favor–Supreme Court cases. 98 L. Ed. 2d 1074.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-25. Right to appeal; stay of judgment; bail on appeal.

(1) A final judgment entered under this article may be reviewed by the supreme court of Mississippi on appeal brought either by the prisoner or the state on such terms and conditions as are provided for in criminal cases.

(2) A perfection of appeal by the state shall act as a supersedeas and shall stay the judgment until there is a final adjudication by the supreme court.

(3) When the appeal is brought by the state, the prisoner may be released on bail pending appeal under the terms and conditions provided for in Rule 7.02, Mississippi Uniform Criminal Rules of Circuit Court Practice.

(4) When the appeal is brought by the prisoner, bail shall not be allowed.

(5) The attorney general shall represent the state in all appeals under this article, whether the appeal is brought by the prisoner or by the state.

HISTORY: Laws, 1984, ch. 378, § 13, eff from and after passage (approved April 17, 1984).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000 meeting.

Cross References — Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

1. In general.

There was no error in the circuit court's decision to grant appellant leave to proceed in forma pauperis on appeal because he alleged unlawful revocation of parole both at trial level and on appeal. Cook v. State, 282 So. 3d 760, 2019 Miss. App. LEXIS 404 (Miss. Ct. App. 2019).

When defendant did not allege defendant did not timely perfect an appeal through no fault of defendant's, an appellate court was not deprived of jurisdiction because the State did not appeal a civil post-conviction order granting defendant an out-of-time appeal or argue the order was void. Griffin v. State, 269 So. 3d 337, 2018 Miss. App. LEXIS 187 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 796, 2019 Miss. LEXIS 6 (Miss. 2019).

Appellant's notice of appeal was untimely, and thus, his appeal had to be dismissed, because appellant filed the notice of appeal more than thirty days after the judgment was entered; as appellant waited an additional thirty-three days to file his notice of appeal, and there were no extraordinary circumstances, it was not in the interest of justice to suspend the thirty-day requirement. Cane v. State, 206 So. 3d 1268, 2016 Miss. App. LEXIS 814 (Miss. Ct. App. 2016).

Pursuant to Miss. Code Ann. § 99-39-25(1), post-conviction relief proceedings are governed by the rules controlling criminal appeals. Williams v. State, 4 So. 3d 388, 2009 Miss. App. LEXIS 128 (Miss. Ct. App. 2009).

Appeal from a final judgment denying post-conviction relief was provided for by the Mississippi Uniform Post-Conviction Collateral Relief Act, and there was no right to appointed counsel, Miss. Code Ann. § 99-39-25(1); thus, defendant was not entitled to counsel for his appeal from the denial of his motion for post-conviction relief. Watts v. State, 981 So. 2d 1034, 2008 Miss. App. LEXIS 272 (Miss. Ct. App. 2008).

Even though an appeal from the denial of post-conviction relief was not timely filed, an appellate court was permitted to consider the merits to prevent manifest injustice under Miss. R. App. P. 4(g), Miss. R. App. P. 2(c), and Miss. Code Ann. § 99-39-25(1). Heafner v. State, 947 So. 2d 354, 2007 Miss. App. LEXIS 17 (Miss. Ct. App. 2007).

Inmate was not entitled to bail, pursuant to Miss. Code Ann. § 99-35-115, during the appeal of the denial of the inmate's petition for post-conviction relief, as, under Miss. Code Ann. § 99-39-25(4), bail was not permitted for such prisoners. Atwell v. State, 848 So. 2d 190, 2003 Miss. App. LEXIS 348 (Miss. Ct. App. 2003).

Appellate court dismissed defendant's appeal of alleged denial of defendant's petition for post-conviction relief as no final order was ever entered by the trial court and, absent such an order, the appellate court lacked jurisdiction to consider the appeal. Scott v. State, 817 So. 2d 642, 2002 Miss. App. LEXIS 306 (Miss. Ct. App. 2002).

On appeal following remand for evidentiary hearing in postconviction relief proceeding on petitioner's claim that he was denied right to testify in his own behalf, issue of whether especially heinous, atrocious or cruel aggravating circumstance instruction required reversal of death sentence and new sentencing hearing was not properly before court and would not be discussed. Neal v. State, 687 So. 2d 1180, 1996 Miss. LEXIS 423 (Miss. 1996).

Question of defendant's actual guilt of conspiracy could not be litigated on appeal from denial of postconviction relief after defendant pled guilty to conspiracy. Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

A post-conviction relief petitioner was not entitled to de novo review on appeal from a ruling that he was competent to be executed where the trial judge stated that he relied on § 99-19-57(2)(b) and Ford v. Wainwright (1985, US) 91 L. Ed. 2d 335, 106 S. Ct. 2595 in determining the petitioner's competency, and that the petitioner failed to prove by a preponderance of the evidence that he was not competent to be executed; the petitioner was afforded due process and the trial judge's ruling could only be reversed if it were against the overwhelming weight of the evidence or an abuse of discretion. Billiot v. State, 655 So. 2d 1, 1995 Miss. LEXIS 88 (Miss. 1995), cert. denied, 516 U.S. 1095, 116 S. Ct. 818, 133 L. Ed. 2d 762, 1996 U.S. LEXIS 787 (U.S. 1996).

The rule that the death of a defendant who has perfected his or her right to appeal does not render the appeal moot applies to petitions for rehearing or when a defendant dies pending appeal from a denial of post-conviction relief; however, if a defendant dies pending application to the Supreme Court for leave to proceed in trial court on post-conviction relief grounds, the application will be deemed moot and the conviction will remain intact. Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

A petitioner was not entitled to proceed with an out-of-time appeal, even though he alleged that he had never received a copy of the order from which he sought to appeal and that this prevented him from timely appealing through no fault of his own, where his original postconviction petition to the circuit court to set aside his guilty plea was time barred. When one seeks an out-of-time appeal from a ruling of a trial court on a petition that was already time barred by law at the time it was filed, an out-of-time appeal would accomplish nothing. Freelon v. State, 569 So. 2d 1168, 1990 Miss. LEXIS 580 (Miss. 1990).

Under § 99-39-7 and this section, there are only 2 instances in which the Supreme Court can entertain a post-conviction motion. One is where the matter is presented originally to the trial court and thereafter appealed to the Supreme Court pursuant to this section. The other is where the prisoner is required to first seek leave of the Supreme Court to proceed in the lower court. Martin v. State, 556 So. 2d 357, 1990 Miss. LEXIS 28 (Miss. 1990).

A defendant's post-conviction relief action for a stay of execution of a lower court judgment revoking probation, which was filed in the Supreme Court of Mississippi, would be dismissed without prejudice as having been filed in the wrong court, even though the defendant's previous direct appeal to the Supreme Court seeking review of the probation revocation was dismissed "without prejudice for [the defendant] to institute a post-conviction relief action under § 99-39-5(1)(g)," and thus the Supreme Court was arguably the last court to exercise jurisdiction and should therefore be the court of first resort for the post-conviction petition. For the Supreme Court to acquire exclusive, original jurisdiction over a petition filed under the Post-Conviction Relief Act, the Supreme Court must have previously made some final determination going to the merits of the underlying conviction and sentence; it is not enough that the Supreme Court dismissed an appeal without prejudice for lack of jurisdiction, and that the Supreme Court granted a temporary stay of execution incident to attempted post-conviction proceedings. In order to obtain Supreme Court review, the defendant would be required to file an appropriate petition in the lower court, claiming under § 99-39-5(1)(g) that his probation has been unlawfully revoked, and if dissatisfied with the ruling of that court he could appeal that ruling to the Supreme Court pursuant to § 99-39-25. Martin v. State, 556 So. 2d 357, 1990 Miss. LEXIS 28 (Miss. 1990).

A prisoner who has filed a proper motion pursuant to the Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.) may be entitled to trial transcripts or other relevant documents under the discovery provisions of § 99-39-15, upon good cause shown and in the discretion of the trial judge. If the prisoner's request for transcripts or other documents is denied, and his or her overall petition is ultimately denied, then the prisoner may appeal the denial of the petition for collateral relief pursuant to this section and, within that appeal, the prisoner may include the claim that the denial of his or her request for transcripts or other documents was error. However, nothing in the Uniform Post-Conviction Collateral Relief Act or elsewhere gives the prisoner the right to institute an independent, original action for a free transcript or other documents, and then if dissatisfied with the trial court's ruling, to directly appeal that ruling to the Supreme Court as a separate and independent action. Fleming v. State, 553 So. 2d 505, 1989 Miss. LEXIS 476 (Miss. 1989), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

The death of a defendant who has perfected his or her right to appeal does not render the appeal moot and leave his or her conviction permanently in place. (Overruling Berryhill v. State (Miss. 1986) 492 So. 2d 288 and Haines v. State (Miss. 1983) 428 So. 2d 590.) Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

Law Reviews.

Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

(1) The application for leave to proceed in the trial court filed with the Supreme Court under Section 99-39-7 shall name the State of Mississippi as the respondent.

(2) The application shall contain the original and two (2) executed copies of the motion proposed to be filed in the trial court together with such other supporting pleadings and documentation as the Supreme Court by rule may require.

(3) The prisoner shall serve an executed copy of the application upon the Attorney General simultaneously with the filing of the application with the court.

(4) The original motion, together with all files, records, transcripts and correspondence relating to the judgment under attack, shall promptly be examined by the court.

(5) Unless it appears from the face of the application, motion, exhibits and the prior record that the claims presented by those documents are not procedurally barred under Section 99-39-21 and that they further present a substantial showing of the denial of a state or federal right, the court shall by appropriate order deny the application. The court may, in its discretion, require the Attorney General upon sufficient notice to respond to the application.

(6) The court, upon satisfaction of the standards set forth in this article, is empowered to grant the application.

(7) In granting the application the court, in its discretion, may:

(a) Where sufficient facts exist from the face of the application, motion, exhibits, the prior record and the state's response, together with any exhibits submitted with those documents, or upon stipulation of the parties, grant or deny any or all relief requested in the attached motion.

(b) Allow the filing of the motion in the trial court for further proceedings under Sections 99-39-13 through 99-39-23.

(8) No application or relief shall be granted without the Attorney General being given at least five (5) days to respond.

(9) The dismissal or denial of an application under this section is a final judgment and shall be a bar to a second or successive application under this article. Excepted from this prohibition is an application filed under Section 99-19-57(2), raising the issue of the offender's supervening mental illness before the execution of a sentence of death. A dismissal or denial of an application relating to mental illness under Section 99-19-57(2) shall be res judicata on the issue and shall likewise bar any second or successive applications on the issue. Likewise excepted from this prohibition are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States that would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, that is of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence. Likewise exempted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.

(10) Proceedings under this section shall be subject to the provisions of Section 99-19-42.

(11) Post-conviction proceedings in which the defendant is under sentence of death shall be governed by rules established by the Supreme Court as well as the provisions of this section.

HISTORY: Laws, 1984, ch. 378, § 14; Laws, 1995, ch. 566, § 6; Laws, 2000, ch. 569, § 14; Laws, 2008, ch. 442, § 42, eff from and after July 1, 2008.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in this section. The reference to "this chapter" was changed to "this article." The Joint Committee ratified the correction at its September 18, 2000, meeting.

Editor's Notes — Laws of 2000, ch. 569, § 1, provides:

"SECTION 1. Sections 1 through 18 of this act may be cited as the 'Mississippi Capital Post-Conviction Counsel Act.' "

Sections 1 through 10 of Laws of 2000, ch. 569 are codified at Article 3 of Chapter 39 of this title. Sections 11 through 18 of ch. 569 contain §§ 99-19-105, 99-39-5, 99-39-23, 99-39-27, 99-15-18, 99-39-28, 99-19-106, and the repeal of § 99-19-49.

Cross References — Filing motion for collateral relief, see § 99-39-7.

Need for judicial examination of motion for collateral relief and motion to proceed, see

§ 99-39-11.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Dismissal or denial of application.
3. Application granted.
4. Successive petitions.
5. Jurisdiction.

1. In general.

Court of Appeals of Mississippi could not reserve post-conviction claims for defendant, and could only deny relief without prejudice to a future post-conviction claim, because, as defendant had appealed defendant's conviction, defendant had to petition the Supreme Court of Mississippi for leave to file a post-conviction-relief motion. This could only be done after post-conviction issues outside the record, if they existed, were found, and a proposed motion was executed and submitted to the Supreme Court. Walker v. State, 262 So. 3d 560, 2018 Miss. App. LEXIS 302 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 42 (Miss. 2019).

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment, petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

To the extent that information obtained pursuant to the rule's discovery mechanism is relevant to a petition for post-conviction relief, it must be attached to the petition, at which time the State will have access to it; if the petitioner is able to demonstrate a substantial showing of the denial of a state or federal right and is allowed to proceed to the trial court, the State is allowed access to the full spectrum of civil discovery, which it may employ to prepare and defend its case. Corrothers v. State, 189 So. 3d 612, 2015 Miss. LEXIS 468 (Miss. 2015).

Although an appellate court could not affirm a denial of an inmate's petition for post-conviction relief on the grounds that it was procedurally barred by Miss. Code Ann. § 99-39-27, the appellate court affirmed the denial on other grounds. Steen v. State, 933 So. 2d 1052, 2006 Miss. App. LEXIS 529 (Miss. Ct. App. 2006).

Court rejected the State's argument that the inmate failed to comply with the requirements of Miss. Code Ann. § 99-39-11(3); (1) first, the court found no requirement of verification in the statute, and (2) while verification of the motion to vacate death sentence was required by Miss. Code Ann. § 99-39-9(3), and absent substantial compliance with Miss. Code Ann. § 99-39-9(4), a prisoner faced possible dismissal of an application, the court found nothing to be gained in this instance in returning the inmate's motion and application filed under Miss. Code Ann. § 99-39-27 for verification. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

Because a new decision was an intervening decision, even though an inmate's application for post-conviction relief was time-barred under Miss. Code Ann. § 99-39-5(2), the application was not barred under Miss. Code Ann. § 99-39-27(9) and was eligible to be considered on the merits. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

Although the court was not without the authority to decide the merits of an inmate's application pursuant to Miss. Code Ann. § 99-39-27(7), the court found that due process required the court to allow the inmate's motion to be filed in the trial court for the consideration of mental retardation evidence as a defense to the death penalty as cruel and unusual punishment under U.S. Const. Amend. VIII. Chase v. State, 873 So. 2d 1013, 2004 Miss. LEXIS 548 (Miss. 2004).

The circuit court had jurisdiction to entertain a post-conviction motion and to grant an evidentiary hearing since the statute makes clear that when the Supreme Court allows the filing of a motion with the trial court, further proceedings shall occur under the several, enumerated sections of the Post Conviction Collateral Relief Act. Payton v. State, 708 So. 2d 559, 1998 Miss. LEXIS 101 (Miss. 1998).

State statute providing that state supreme court was to deny application to proceed on motion for post-conviction relief, unless it appeared from face of application, motion, exhibits, exhibits and prior record that post-conviction claims were not procedurally barred under separate statute and that they further presented substantial showing of denial of state or federal right, could not operate as procedural bar to federal habeas review, because it required some evaluation of merits of applicant's claims and was not separate from merits of habeas claim. Stokes v. Anderson, 123 F.3d 858, 1997 U.S. App. LEXIS 28557 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1134, 118 S. Ct. 1091, 140 L. Ed. 2d 147, 1998 U.S. LEXIS 1232 (U.S. 1998).

Trial court was not authorized to summarily deny motion to vacate conviction and sentence after Supreme Court granted movant's application for leave to file motion for post-conviction relief. Hymes v. State, 703 So. 2d 258, 1997 Miss. LEXIS 638 (Miss. 1997).

Statement by Mississippi Supreme Court that inmate's habeas claims were barred by state Uniform Post-Conviction Collateral Relief Act and failed to present substantial showing of denial of state or federal right was plain statement that state's review of claim was procedurally barred, as required for district court to deny federal habeas review based on state procedural ground. Martin v. Maxey, 98 F.3d 844, 1996 U.S. App. LEXIS 28836 (5th Cir. Miss. 1996).

A post-conviction relief petitioner who claimed he was not competent to be executed bore the burden of showing by a preponderance of the evidence that, at the time of the hearing, he was not competent; even after he made the threshold showing that entitled him to proceed in trial court under this section, he faced a presumption that he was sane and competent to be executed. Billiot v. State, 655 So. 2d 1, 1995 Miss. LEXIS 88 (Miss. 1995), cert. denied, 516 U.S. 1095, 116 S. Ct. 818, 133 L. Ed. 2d 762, 1996 U.S. LEXIS 787 (U.S. 1996).

The rule that the death of a defendant who has perfected his or her right to appeal does not render the appeal moot applies to petitions for rehearing or when a defendant dies pending appeal from a denial of post-conviction relief; however, if a defendant dies pending application to the Supreme Court for leave to proceed in trial court on post-conviction relief grounds, the application will be deemed moot and the conviction will remain intact. Gollott v. State, 646 So. 2d 1297, 1994 Miss. LEXIS 572 (Miss. 1994).

A capital murder defendant's motion to reduce his sentence of death to a life sentence would be denied, and his alternative motion to vacate and set aside his death sentence and remand the cause for a new sentencing hearing would be granted, where the defendant sought relief based on the jury's consideration of the "especially heinous, atrocious or cruel" aggravating circumstance without further guidance concerning the meaning of this aggravating circumstance, and he contended that Maynard v. Cartwright (1988, US) 100 L. Ed. 2d 372, 108 S. Ct. 1853 and Clemons v. Mississippi (1990, US) 108 L. Ed. 2d 725, 110 S. Ct. 1441 were intervening decisions within the meaning of subsection (9) of this section. Smith v. State, 648 So. 2d 63, 1994 Miss. LEXIS 666 (Miss. 1994).

Question of whether admission at trial of tape recorded statements taken from defendant outside presence of counsel violated Sixth Amendment rights was res judicata and barred from relitigation because defendant's conviction of murder became final when Fifth Circuit upheld his conviction and he did not petition United States Supreme Court to review that decision. Jordan v. State, 518 So. 2d 1186, 1987 Miss. LEXIS 2799 (Miss. 1987), cert. denied, 488 U.S. 818, 109 S. Ct. 57, 102 L. Ed. 2d 35, 1988 U.S. LEXIS 3832 (U.S. 1988).

Intervening decision alone does not preclude waiver under § 99-39-21, but can only except case from effect of 3-year statute of limitations in § 99-39-5(2) and prohibition of second petitions in § 99-39-27(9). Wiley v. State, 517 So. 2d 1373, 1987 Miss. LEXIS 2915 (Miss. 1987), cert. denied, 486 U.S. 1036, 108 S. Ct. 2024, 100 L. Ed. 2d 610, 1988 U.S. LEXIS 2458 (U.S. 1988).

2. Dismissal or denial of application.

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

Petition for postconviction relief failed to present a substantial showing of the denial of a state or federal right as required for relief, as the contradictory opinions provided by the inmate's expert overwhelmingly belied his assertion that midazolam was not an appropriate anesthetic or sedative and thus, the inmate failed to show the denial of a state or federal rights from the use of midazolam in the legal injection process. Loden v. State, 264 So. 3d 707, 2018 Miss. LEXIS 492 (Miss. 2018).

In his post-conviction relief petition, petitioner failed to identify an alternative method of execution that was feasible, readily implemented, and significantly reduced a substantial risk of severe pain; thus, from the face of the petition, he had no Eighth Amendment method-of-execution claim, and his request for leave to proceed in the trial court with a motion for post-conviction relief was denied. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Because petitioner failed to show a different outcome would have been reached had a witness testified according to her affidavit, his request for leave to proceed with in the trial court with a motion for post-conviction relief on his recanted-testimony claim was denied; the witness was not the only one who identified petitioner. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Petitioner was denied leave to proceed in the trial court with a motion for post-conviction relief because he failed to show that counsel's actions were deficient and that the deficiency prejudiced the defense of the case for any of his ineffective-assistance-of-counsel claims. Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

Circuit court properly dismissed petitioner's application for post-conviction relief because petitioner's claims were barred by res judicata; petitioner's third petition raises the identical issues of ineffective assistance of counsel that were raised in his second petition. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

Circuit court properly dismissed petitioner's application for post-conviction relief (PCR) because no fundamental-right exception applied to overcome the procedural bars; petitioner failed to produce his own affidavit, or any affidavit, in support of his ineffective-assistance claim regarding his PCR counsel. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

In a capital case, while one of defendant's trial attorneys, who was later employed by the district attorney's office, exercised poor judgment when he destroyed a case file, there was no substantial showing of the denial of a state or federal right under Miss. Code Ann. § 99-39-27(5) because defendant had the originals of the very same material. Loden v. State, 43 So. 3d 365, 2010 Miss. LEXIS 204 (Miss. 2010).

In a capital case, defendant's petition for post-conviction relief was denied because there was no substantial showing of the denial of a state or federal right under Miss. Code Ann. § 99-39-27(5) where defense counsel was not deficient for failing to investigate mitigating evidence because defendant instructed counsel not to present mitigating evidence at sentencing. Loden v. State, 43 So. 3d 365, 2010 Miss. LEXIS 204 (Miss. 2010).

Denial of appellant's, an inmate's, motion for post-conviction relief was proper because he failed to show that he received the ineffective assistance of counsel. The admission of a videotape was erroneous not based upon any substantive flaw in the videotape itself that could have been objected to prior to the videotape's admission into evidence, but upon a violation of Miss. R. Evid. 901; the inmate's trial counsel did object to the admission of the videotape for that precise reason and therefore, he was unable to show that his trial counsel's failure to renew his motion for a continuance satisfied either prong of Strickland. Conway v. State, 48 So. 3d 588, 2010 Miss. App. LEXIS 270 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 627 (Miss. 2010).

Denial of appellant's, an inmate's, request for post-conviction relief after he was convicted of capital murder (murder during the commission of sexual battery) was appropriate because he failed to prove that he received the ineffective assistance of counsel. Even if counsel had procured a DNA expert who testified that the inmate's DNA was not present, that did not exonerate him of the sexual battery charge because sexual penetration could be by insertion of any object into the genital or anal opening of another person's body. Havard v. State, 988 So. 2d 322, 2008 Miss. LEXIS 264 (Miss. 2008).

Defendant's motion for post-conviction relief was barred by the three-year statute of limitation found in Miss. Code Ann. § 99-39-5(2), and there were no exceptions under Miss. Code Ann. § 99-39-27(9), and the circuit court correctly denied defendant's motion. Gore v. State, 970 So. 2d 190, 2007 Miss. App. LEXIS 552 (Miss. Ct. App. 2007).

Petitioner's motion for post-conviction relief was properly denied where one of his rape convictions and sentence had been appealed to the Mississippi Supreme Court, which upheld the conviction and sentence; petitioner should have filed an application for leave to proceed in the trial court prior to filing for relief. Stewart v. State, 938 So. 2d 344, 2006 Miss. App. LEXIS 694 (Miss. Ct. App. 2006).

Petitioner for post-conviction relief is required to make a substantial showing of the denial of a state or federal right. Petitoner's bald assertion of innocence fails to make such a showing. The issue is without merit. Hughes v. State, 892 So. 2d 203, 2004 Miss. LEXIS 1355 (Miss. 2004), cert. denied, 545 U.S. 1130, 125 S. Ct. 2935, 162 L. Ed. 2d 870, 2005 U.S. LEXIS 4906 (U.S. 2005).

Defendant cited no intervening cases or newly discovered evidence that would have excepted his claim from the procedural bar on successive post-conviction relief motions; therefore, his second motion was an impermissible successive attempt at post-conviction relief, in violation of Miss. Code Ann. § 99-39-27(9). Clark v. State, 898 So. 2d 687, 2004 Miss. App. LEXIS 982 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679, 2005 Miss. LEXIS 263 (Miss. 2005).

There was no intervening decision that would warrant a reversal of a petitioner's sentence of death because the decision was distinguishable from the reasoning in the petitioner's direct appeal regarding the admissibility of evidence of a sheriff's subsequent extortion conviction. Wilcher v. State, 863 So. 2d 719, 2003 Miss. LEXIS 526 (Miss. 2003), cert. denied, 542 U.S. 942, 124 S. Ct. 2917, 159 L. Ed. 2d 821, 2004 U.S. LEXIS 4678 (U.S. 2004).

Inmate's application for post-conviction relief was denied as the claims were without merit, barred by the doctrine of res judicata, procedurally barred as a successive writ under Miss. Code Ann. § 99-39-27(9), and time-barred pursuant to Miss. Code Ann. § 99-39-5(2); the inmate had already raised the argument of the "intervening decision," had not presented any new evidence that was not reasonably discoverable at trial or that would have caused a different result if introduced, nor had the inmate provided evidence of any violation of any fundamental rights, the inmate failed to demonstrate that the claims were not procedurally barred pursuant to Miss. Code Ann. § 99-39-21(6), and failed to prove ineffective assistance of counsel. Wiley v. State, 842 So. 2d 1280, 2003 Miss. LEXIS 187 (Miss. 2003).

The defendant's claim that he was denied his right to testify at trial related to the guilt phase of the trial and was procedurally barred under subsection (9). Williams v. State, 722 So. 2d 447, 1998 Miss. LEXIS 446 (Miss. 1998).

3. Application granted.

Petitioner was granted leave to proceed in the trial court with his post-conviction relief petition on his claim that his Sixth Amendment right to trial by an impartial jury was violated since one of the jurors was biased; since petitioner's claim was at least "procedurally alive," his allegation of improper juror contact warranted an evidentiary hearing Corrothers v. State, 255 So. 3d 99, 2017 Miss. LEXIS 40 (Miss. 2017).

In a post-conviction proceeding in which an inmate appealed the circuit court's denial of his motion as untimely under the three-year limitations period in Miss. Code Ann. § 99-39-5(a), since the Mississippi Supreme Court granted the inmate permission to file a motion for post-conviction collateral relief, as set forth in Miss. Code Ann. § 99-39-27, that was a finding of a prima facie case. The circuit court should have requested that the State respond to the motion; then, pursuant to Miss. Code Ann. § 99-39-19, it should have examined the record and determined whether an evidentiary hearing was required. Pittman v. State, 20 So. 3d 51, 2009 Miss. App. LEXIS 664 (Miss. Ct. App. 2009).

In a capital case for convictions of murder and felonious abuse of a child, the lack of evidence of premeditation and of prior child abuse combined with evidence of defendant's traumatic childhood, history of mental disorders, and substance abuse, about which counsel did not investigate nor present evidence during the penalty phase of the trial, presented a substantial showing that defendant was denied the right to effective assistance of counsel during the penalty phase, and he was entitled to a hearing on the issue pursuant to Miss. Code Ann. § 99-39-27(5). Bennett v. State, 990 So. 2d 155, 2008 Miss. LEXIS 417 (Miss. 2008).

4. Successive petitions.

Defendant was not entitled to leave to proceed in the trial court because his application was subject to the statutory time bar, his previous petition for post-conviction relief was denied, the filing was successive, he presented no arguable basis for his claims, and the petition was frivolous. Cooper v. State, — So. 3d —, 2020 Miss. LEXIS 97 (Miss. Apr. 28, 2020).

Petitioner's initial petition for post-conviction relief was ultimately denied, and thus, his second petition was subject to the successive-writ bar. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 99 (Miss. Apr. 30, 2020).

Petition for postconviction relief was subject to the successive writ bar of Miss. Code Ann. § 99-39-27 where his numerous prior petitions for postconviction relief had been denied or dismissed. Blunt v. State, — So. 3d —, 2019 Miss. LEXIS 164 (Miss. Apr. 17, 2019).

Petitioner's motion for leave to proceed in the trial court was barred as a successive motion because the supreme court had denied his first postconviction relief motion and also dismissed his two subsequent motions as successive. Forkner v. State, 277 So. 3d 946, 2019 Miss. LEXIS 19 (Miss. 2019).

Holding that where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective, is limited to the federal habeas corpus proceedings and does not apply to state post-conviction proceedings. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

Circuit court properly dismissed petitioner's application for post-conviction relief because the petition was time-barred and procedurally barred as a successive writ; no fundamental-right exception applied to overcome the procedural bars. Salter v. State, 184 So. 3d 944, 2015 Miss. App. LEXIS 299 (Miss. Ct. App. 2015), cert. denied, 185 So. 3d 385, 2016 Miss. LEXIS 69 (Miss. 2016).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his argument that he received the ineffective assistance of counsel due to trial counsel's failure to develop and present mitigation evidence was raised in his first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred under Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Notwithstanding the bar, the inmate's trial counsel presented evidence at the sentencing hearing of the inmate's age, his poverty-stricken upbringing, his violent and abusive father, his relationship with his three-year-old son and his academic problems; the inmate failed to show that trial counsel's failure to present further evidence caused him prejudice. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was improper, in part, because he was entitled to an evidentiary hearing in the trial court regarding whether he was mentally retarded. The inmate had a fundamental constitutional right not to be executed and a licensed psychologist whose affidavit was attached to the inmate's post-conviction relief petition met the Chase qualifications for an expert on the issue. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his argument that he received ineffective assistance of counsel due to trial counsel's waiver of objection to the State's peremptory strikes of jurors under Batson was raised in the inmate's first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred pursuant to Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Notwithstanding the bar, the inmate's trial counsel presented no evidence of prejudice to the inmate other than speculation due to the racial composition of the inmate's jury, and therefore, the issue was without merit. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Denial of petitioner's, an inmate's, Motion for Leave to File Successive Petition for Post-Conviction Relief was proper, in part, because his claim that he received the ineffective assistance of counsel due to trial counsel's failure to properly investigate and present his alibi defense was raised in his first petition for post-conviction relief and was rejected; thus, the issue was procedurally barred pursuant to Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9). Further, the issue was without merit because the decision not to present evidence of an alibi was acceptable trial strategy. Bell v. State, 66 So. 3d 90, 2011 Miss. LEXIS 85 (Miss. 2011).

Where appellant pleaded guilty to burglary of a building, his first motion for post-conviction relief was dismissed as time-barred. The Court of Appeals of Mississippi held that appellant's second motion for post-conviction relief was both time-barred and procedurally barred as a successive writ under Miss. Code Ann. § 99-39-27(9). Ross v. State, 19 So. 3d 108, 2009 Miss. App. LEXIS 147 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 486 (Miss. 2009).

Dismissal of an inmate's third motion for post-conviction relief was appropriate because the inmate's third post-conviction relief motion did not fall under any of the listed exceptions under Miss. Code Ann. §§ 99-39-5(2) or 99-39-27(9) and thus, was time-barred and procedurally barred as a successive writ. McGriggs v. State, 14 So. 3d 746, 2009 Miss. App. LEXIS 34 (Miss. Ct. App.), cert. denied, 15 So. 3d 426, 2009 Miss. LEXIS 371 (Miss. 2009), cert. denied, 558 U.S. 1097, 130 S. Ct. 1026, 175 L. Ed. 2d 628, 2009 U.S. LEXIS 9030 (U.S. 2009).

Trial court properly denied defendant's first petition for post-conviction relief, which raised only the issue of a reduction in defendant's sentence; all other grounds for relief were raised by means of a successive writ and therefore were procedurally barred. Henry v. State, 999 So. 2d 867, 2008 Miss. App. LEXIS 418 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 24 (Miss. 2009).

Circuit court properly dismissed defendant's motion for post-conviction relief as it was procedurally barred as impermissible second attempt to obtain post-conviction relief, Miss. Code Ann. § 99-39-27(9).

Jones v. State, 995 So. 2d 822, 2008 Miss. App. LEXIS 389 (Miss. Ct. App. 2008).

Motion for post-conviction relief was not time barred in a case involving aggravated assault and robbery due to the scope of leave to proceed granted by the Mississippi Supreme Court, which must have determined that the petition was not procedurally barred on its face; moreover, newly discovered evidence could have also overcome the successive writ and procedural bar. State v. Bass, 4 So. 3d 353, 2008 Miss. App. LEXIS 85 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 113 (Miss. Mar. 12, 2009).

Defendant's motion for post-conviction relief on March 18, 2006, was successive to the letter dated September 12, 2005; the trial court's order on December 7, 2005 dismissed the post-conviction matter motion to remove detainer, and therefore this motion was procedurally barred on the basis that it was successive in nature pursuant to Miss. Code Ann. § 99-39-27(9). Campbell v. State, 963 So. 2d 573, 2007 Miss. App. LEXIS 535 (Miss. Ct. App. 2007).

Defendant's second motion for post-conviction relief was properly denied as a prohibited successive writ because defendant's claimed newly discovered evidence under Miss. Code Ann. § 99-39-27(9) was easily discoverable at the time of trial; the evidence consisted of affidavits from the circuit court which certified that the circuit court had no records of the grand jury proceedings in which defendant was indicted, the affidavit of the grand jury foreman, or the minutes of the grand jury. Barnes v. State, 969 So. 2d 96, 2007 Miss. App. LEXIS 282 (Miss. Ct. App.), cert. dismissed, 968 So. 2d 948, 2007 Miss. LEXIS 665 (Miss. 2007).

Appellate court affirmed the denial of an inmate's petition for post-conviction relief; it was barred as a successive petition pursuant to Miss. Code Ann. § 99-39-27(9), and there were no fundamental constitutional rights that would operate as an exception to the procedural bar. Berry v. State, 924 So. 2d 624, 2006 Miss. App. LEXIS 179 (Miss. Ct. App. 2006).

Motion for post-conviction relief filed more than seven years after the entry of a guilty plea to drug charges was properly denied as being time barred under Miss. Code Ann. § 99-39-5(2); moreover, it was also a successive petition under Miss. Code Ann. § 99-39-27(9) where relief had been denied once before, despite the style of the motion. King v. State, 943 So. 2d 743, 2006 Miss. App. LEXIS 865 (Miss. Ct. App. 2006), cert. dismissed, 958 So. 2d 1232, 2007 Miss. LEXIS 319 (Miss. 2007).

Defendant's reliance on a prior opinion was without merit as the opinion which replaced it did not contain the language upon which defendant relied; the successive petition bar in Miss. Code Ann. § 99-39-27(9) prevented defendant from raising this motion for post-conviction relief and the intervening decision exception did not apply. Simmons v. State, 942 So. 2d 802, 2006 Miss. LEXIS 652 (Miss. 2006).

Defendant's current petition for "writ of habeas corpus" was procedurally barred because it was actually a second motion for post-conviction relief, which was prohibited under Miss. Code Ann. § 99-39-27(9) as a successive writ; defendant's remaining claims were barred as a successive writ. Vance v. State, 941 So. 2d 225, 2006 Miss. App. LEXIS 807 (Miss. Ct. App. 2006).

Defendant's petition for post-conviction relief was clearly a successive writ, Miss. Code Ann. § 99-39-27(9), and was time-barred under Miss. Code Ann. § 99-39-5(2). Roland v. State, 939 So. 2d 810, 2006 Miss. App. LEXIS 671 (Miss. Ct. App. 2006).

Appellant who pled guilty to armed robbery and aggravated assault was procedurally barred from bringing a second motion for post-conviction relief; appellant's claim that the guilty plea was involuntary and that he received the ineffective assistance of counsel did not prove a violation of his fundamental rights that would qualify as an exception to the procedural bar. Ellis v. State, 952 So. 2d 251, 2006 Miss. App. LEXIS 545 (Miss. Ct. App. 2006).

Having previously filed a motion for post-conviction relief which was dismissed by the trial court, defendant may not file a second or successive motion under Miss. Code Ann. § 99-39-27(9) absent some exception to the procedural bar. Smith v. State, 922 So. 2d 43, 2006 Miss. App. LEXIS 126 (Miss. Ct. App. 2006).

Both defendant's application for leave to file a motion for post-conviction relief, attacking his rape conviction and sentence in 2001 (denied by the Mississippi Supreme Court), and his motion for post-conviction relief in 2002 (which raised the issue of his parole eligibility), attacked the same conviction and sentence. Thus, his subsequent motion for post-conviction relief was barred as a successive writ under Miss. Code Ann. § 99-39-27(9); in addition, in its order denying his prior application, the Mississippi Supreme court had stated that defendant's sentence was to be interpreted in accordance with the governing laws at the time his crime was committed, and again, his later motion for post-conviction relief attacked the same sentence and was a successive writ. Bynum v. State, 916 So. 2d 534, 2005 Miss. App. LEXIS 978 (Miss. Ct. App. 2005).

Petitioner's notice of appeal in writ of state habeas corpus was properly denied as a successive writ pursuant to Miss. Code Ann. § 99-39-27(9) because petitioner had previously filed an application for post-conviction relief, which was denied. The notice of appeal in writ of state habeas corpus was also time barred under Miss. Code Ann. § 99-39-5(2). Austin v. State, 914 So. 2d 1281, 2005 Miss. App. LEXIS 916 (Miss. Ct. App. 2005).

Appellate court affirmed the dismissal of the inmate's motion for post-conviction relief as it was also barred as a successive writ under Miss. Code Ann. § 99-39-27(6) as it was the second motion filed. Hill v. State, 914 So. 2d 293, 2005 Miss. App. LEXIS 770 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief on the basis that his probation was unlawfully revoked was proper where the trial court had found that he had previously presented his argument. The appellate court was unwilling to allow the inmate numerous attempts at presenting the same issues. Robinson v. State, 904 So. 2d 203, 2005 Miss. App. LEXIS 396 (Miss. Ct. App. 2005).

Inmate's third motion for post-conviction relief was properly dismissed as an impermissible successive attempt to obtain post-conviction relief. The inmate cited to no intervening cases or newly discovered evidence, not reasonably discoverable at the time of trial, which would except his claim from the successive writ bar. Brown v. State, 907 So. 2d 979, 2005 Miss. App. LEXIS 144 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 447 (Miss. 2005).

Defendant's motion for post-conviction relief failed as it was procedurally barred in accordance with Miss. Code Ann. § 99-39-27(9); defendant filed his first motion for post-conviction relief on April 12, 1994; the circuit court denied relief and the supreme court affirmed on June 5, 1997; as such, his most recent motion, filed August 22, 2003, was barred as a successive writ. Cook v. State, 910 So. 2d 745, 2005 Miss. App. LEXIS 225 (Miss. Ct. App. 2005).

Defendant's appeal was a successive petition for an out-of-time appeal, thus he was procedurally barred from prosecuting his appeal under Miss. Code Ann. § 99-39-27 because his previous application for relief was acted upon by the court and denied. Also the trial court had properly denied defendant's prior three motions for post-conviction relief from his murder conviction where defendant failed to assert his motions within the three-year statutory time period provided under Miss. Code Ann. § 99-39-5(2) or to establish that his claims fell within one of its three recognized exceptions. Bass v. State, 888 So. 2d 1187, 2004 Miss. App. LEXIS 953 (Miss. Ct. App. 2004).

Inmate's second petition for post-conviction relief was properly denied as the inmate did not cite any intervening cases or newly discovered evidence that would except his claim from the procedural bar in Miss. Code Ann. § 99-39-27(9). Bell v. State, 886 So. 2d 739, 2004 Miss. App. LEXIS 456 (Miss. Ct. App.), cert. denied, 887 So. 2d 183, 2004 Miss. LEXIS 1386 (Miss. 2004), cert. denied, 544 U.S. 925, 125 S. Ct. 1647, 161 L. Ed. 2d 485, 2005 U.S. LEXIS 2526 (U.S. 2005).

Atkins v. Virginia, declaring the execution of the mentally retarded to be unconstitutional, was an "intervening decision" under Miss. Code Ann. § 99-39-27(9), such that the procedural bars raised by the State, that of timeliness and successive application, were inapplicable. Foster

v. State, 848 So. 2d 172, 2003 Miss. LEXIS 294 (Miss. 2003).

There is a distinction between newly discovered evidence, which may not be subjected to the procedural bar, and newly disclosed evidence that was known to the movant from the inception of the proceeding but, for reasons not apparent on the record, was not disclosed at the time of sentencing. Williams v. State, 802 So. 2d 1058, 2001 Miss. App. LEXIS 526 (Miss. Ct. App. 2001).

The defendant's motion for post-conviction relief was a second attempt at gaining post-conviction relief not falling within any of the statutory exceptions to the provision barring subsequent filings after one motion is acted upon by the court. Jackson v. State, 811 So. 2d 340, 2001 Miss. App. LEXIS 19 (Miss. Ct. App. 2001).

The petitioner's second petition for post-conviction relief was barred where he did not pursue an appeal after the denial of his first petition, and he presented the same arguments in his second petition. Buice v. State, 751 So. 2d 1171, 1999 Miss. App. LEXIS 611 (Miss. Ct. App. 1999).

The defendant's motion for post conviction relief was barred by the successive writ bar of subsection (9) of this section, where (1) the defendant appealed his conviction and sentence, and the Court of Appeals affirmed the judgment, (2) he then filed in the Supreme Court an application for leave to proceed in the trial court with a motion for post conviction relief, and such application was denied, and (3) he then filed a post conviction motion in the circuit court. Lawson v. State, 748 So. 2d 96, 1999 Miss. LEXIS 289 (Miss. 1999).

The defendant's petition for post-conviction relief would be denied as an improper successive petition, notwithstanding his contention that his former appointed attorney tricked him into voluntarily dismissing his first appeal knowing that any new petitions would be dismissed as successive writs. Lyle v. State, 756 So. 2d 1, 1999 Miss. App. LEXIS 93 (Miss. Ct. App. 1999).

A second petition for relief, which only sought records, was not barred by subsection (9) since: (1) no final order on the earlier motion had yet been entered, and (2) it did not seek relief from a conviction or sentence. Berryman v. State, 734 So. 2d 292, 1999 Miss. App. LEXIS 48 (Miss. Ct. App. 1999).

A post-conviction motion was barred where the movant had brought a previous similar motion, which had been denied, and no timely appeal was taken. Appeal out-of-time was denied. Sneed v. State, 722 So. 2d 1255, 1998 Miss. LEXIS 447 (Miss. 1998).

5. Jurisdiction.

Circuit court lacked jurisdiction to consider the merits of appellant's motion for postconviction collateral relief because appellant failed to receive permission from the supreme court to file his motion in the trial court, and thus, the court of appeals also lacked jurisdiction to consider the appeal; because the court of appeals heard appellant's direct appeal of his convictions and sentences, appellant was required to seek and obtain the supreme court's permission to file his motion. Presley v. State, 176 So. 3d 158, 2015 Miss. App. LEXIS 515 (Miss. Ct. App. 2015).

As an inmate's conviction had been affirmed on direct appeal, the state's high court thereafter denied certiorari review, and the inmate failed to obtain permission from the high court under Miss. Code Ann. § 99-39-27 before filing his motion for post-conviction relief (PCR), the PCR court lacked jurisdiction to consider it, and the intermediate appellate court lacked jurisdiction to hear his appeal. Clay v. State, 168 So. 3d 987, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. 2013), cert. dismissed, 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Although the inmate received permission from the state supreme court to file a petition for post-conviction relief, the inmate never filed the petition in circuit court; because the post-conviction relief action was never properly commenced, the circuit court erred when it found that it had jurisdiction to decide the issue. Latiker v. State, 991 So. 2d 1239, 2008 Miss. App. LEXIS 591 (Miss. Ct. App. 2008).

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Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

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Habeas corpus: The "Great Writ" in Mississippi state courts. 58 Miss. L. J. 25, Spring, 1988.

Note: Evolving Standards of Decency in Mississippi: Chase v. State, Capital Punishment, and Mental Retardation, 25 Miss. C. L. Rev. 221, Spring, 2006.

§ 99-39-28. Supreme Court to establish rules for post-conviction proceedings in capital cases.

If application to proceed in the trial court is granted, post-conviction proceedings on cases where the death penalty has been imposed in the trial court and appeals from the trial court shall be conducted in accordance with rules established by the Supreme Court.

HISTORY: Laws, 2000, ch. 569, § 16, eff from and after July 1, 2000.

Editor's Notes — Laws of 2000, ch. 569, § 1, provides:
"SECTION 1. Sections 1 through 18 of this act may be cited as the 'Mississippi Capital Post-Conviction Counsel Act.' "
Sections 1 through 10 of Laws of 2000, ch. 569 are codified at Article 3 of Chapter 39 of this title. Sections 11 through 18 of ch. 569 contain §§ 99-19-105, 99-39-5, 99-39-23, 99-39-27, 99-15-18, 99-39-28, 99-19-106, and the repeal of § 99-19-49.
Cross References — Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

§ 99-39-29. Stay of death penalty execution.

If the prisoner or prisoners shall be under sentence of death and the date fixed for the execution of the sentence shall arrive at a time when proceedings for post-conviction collateral relief are pending, either in the state or the federal courts, the Supreme Court of Mississippi shall have the authority to stay the execution upon a substantial showing of merit pending the determination of said proceeding. If, however, a stay has been entered either by a state or federal court and post-conviction collateral relief is denied, the Supreme Court of Mississippi shall forthwith fix a day, not more than thirty (30) days distant from the date of said denial or the vacating of any stay entered by any federal court, for the execution of the sentence, and a warrant shall forthwith issue accordingly.

HISTORY: Laws, 1984, ch. 378, § 15; Laws, 1985, ch. 305, § 2, eff from and after passage (approved February 28, 1985).

Cross References — Review by the Supreme Court of imposition of death penalty generally, see § 99-19-105.

Date of execution of death sentence, see § 99-19-106.

Applications for post-conviction collateral relief in criminal cases, see Miss. R. App. P. 22.

JUDICIAL DECISIONS

1. Ford claims.

Since Miss. Code Ann. § 99-39-29 required that the Mississippi Supreme Court schedule an inmate's execution within 30 days if the federal habeas court rejected the inmate's Ford claim and the inmate's execution date had been stayed since he filed his federal habeas corpus petition, the State's assertion that the inmate's Ford claim was premature because no execution date was scheduled was rejected by the federal habeas court. Billiot v. Epps, 2005 U.S. Dist. LEXIS 28011 (S.D. Miss. Oct. 28, 2005).

Cited in: Dearman v. State, 910 So. 2d 708, 2005 Miss. App. LEXIS 189 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies §§ 1, 2 et seq.

CJS.

24 C.J.S., Criminal Law §§ 2220-2229, 2238-2266, 2272-2288, 2432, 2433, 2454, 2459.

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Smith, The insanity plea in Mississippi: a primer and a proposal. 10 Miss. C. L. Rev. 147, Spring, 1990.

ARTICLE 3.

MISSISSIPPI CAPITAL POST-CONVICTION COUNSEL ACT.

Sec.

99-39-101. Short title.
99-39-103. Office of Post-Conviction Counsel created; personnel; appointment to office; qualifications; removal.
99-39-105. Purpose of office.
99-39-107. Duties of office; attorneys appointed to office to be full time.
99-39-109. Compensation.
99-39-111. Office hours of operation.
99-39-113. Powers and duties of director; requirement of surety bond.
99-39-115. Director to keep a docket of all death penalty cases in Mississippi.
99-39-117. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; Capital Post-Conviction Counsel Fund.
99-39-119. Director authorized to solicit funds for purpose of funding and operating office.

§ 99-39-101. Short title.

This article may be cited as the "Mississippi Capital Post-Conviction Counsel Act."

HISTORY: Laws, 2000, ch. 569, § 1, eff from and after July 1, 2000.

Editor's Notes — Laws of 2000, ch. 569, § 1, provides:

"SECTION 1. Sections 1 through 18 of this act may be cited as the 'Mississippi Capital Post-Conviction Counsel Act.' "

Sections 1 through 10 of Laws of 2000, ch. 569 are codified at Article 3 of Chapter 39 of this title. Sections 11 through 18 of ch. 569 contain §§ 99-19-105, 99-39-5, 99-39-23, 99-39-27, 99-15-18, 99-39-28, 99-19-106, and the repeal of § 99-19-49.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

JUDICIAL DECISIONS

1. In general.

State was not entitled to avail itself of the opt-in structure provided in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C.S. § 2261, thus reducing the one-year limitation period to 180 days for a death row inmate, because it offered no evidence that it had complied with the opt-in structure statutory requirements; mere passage of the Mississippi Capital Post-Conviction Counsel Act, Miss. Code Ann. § 99-39-101 et seq., and promulgation of subsections (d) and (e) to Miss. R. App. P. 22 was not sufficient. Grayson v. Epps, 338 F. Supp. 2d 699, 2004 U.S. Dist. LEXIS 19939 (S.D. Miss. 2004).

§ 99-39-103. Office of Post-Conviction Counsel created; personnel; appointment to office; qualifications; removal.

There is created the Mississippi Office of Capital Post-Conviction Counsel. This office shall consist of a director who shall be an attorney who shall meet all qualifications necessary to serve as post-conviction counsel for persons under a sentence of death and staffed by any necessary personnel as determined and hired by the director. The director shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years, or until a successor takes office. The remaining attorneys and other staff shall be appointed by the director of the office and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The director may be removed from office by the Governor upon finding that the director is not qualified under law to serve as post-conviction counsel for persons under sentences of death, has failed to perform the duties of the office or has acted beyond the scope of the authority granted by law for the office.

HISTORY: Laws, 2000, ch. 569, § 2; Laws, 2001, ch. 526, § 2; Laws, 2009, ch. 335, § 1; Laws, 2011, ch. 343, § 11, eff from and after July 1, 2011.

Editor's Notes — Laws of 2009, ch. 335, § 4, provides:

"SECTION 4. It is the intent of the Legislature that the Director of the Mississippi

Office of Capital Post-Conviction Counsel holding that office as of March 16, 2009, shall continue as director for the term to which appointed unless terminated for cause, but that any vacancies in the office of director on or after March 16, 2009, shall be filled as provided in Section 99-39-103."

Laws of 2011, ch. 343, § 12, effective July 1, 2011, provides:

"SECTION 12. Notwithstanding any other provision of this act, it is the intent of the Legislature that the Directors of the Mississippi Office of Capital Defense Counsel, the Mississippi Office of Indigent Appeals and the Division of Public Defender Training holding those offices as of the effective date of this act shall continue as the directors of their respective offices or division for the term to which appointed unless terminated for cause, but that any vacancies in the office of division director on or after the effective date of this act shall be filled as provided in Sections 99-18-3 and 99-40-1, as amended by this act."

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

JUDICIAL DECISIONS

ANALYSIS

1.-2. [Reserved for future use.]
3. Right to counsel.

1.-2. [Reserved for future use.]

3. Right to counsel.

Where petitioner state death row inmate argued his due process rights were violated in that counsel was appointed to represent him at the state post-conviction collateral relief stage under Miss. Code Ann. §§ 99-39-103, 99-39-107, but the representation, owing to systemic and other flaws, was completely deficient under Miss. App. R. 22, that argument was rejected for purposes of habeas relief because even with 28 U.S.C.S. § 2261, there was no constitutional right to counsel beyond the direct appeal and ineffectiveness of post-conviction counsel could not be the grounds for habeas relief. Stevens v. Epps, 2008 U.S. Dist. LEXIS 69564 (S.D. Miss. Sept. 15, 2008), aff'd, 618 F.3d 489, 2010 U.S. App. LEXIS 18696 (5th Cir. Miss. 2010).

RESEARCH REFERENCES

Law Reviews.

Comment: Salvation Lies Within: Why the Mississippi Supreme Court Can and Should Step In to Solve Mississippi's Indigent Defense Crisis, 74 Miss. L.J. 213, Fall, 2004.

§ 99-39-105. Purpose of office.

The Office of Capital Post-Conviction Counsel is created for the purpose of providing representation to indigent parties under sentences of death in post-conviction proceedings, and to perform such other duties as set forth by law.

HISTORY: Laws, 2000, ch. 569, § 3, eff from and after July 1, 2000.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

§ 99-39-107. Duties of office; attorneys appointed to office to be full time.

The Office of Capital Post-Conviction Counsel shall limit its activities to the representation of inmates under sentence of death in post-conviction proceedings and ancillary matters related directly to post-conviction review of their convictions and sentences and other activities explicitly authorized in statute. Representation by the office or by private counsel under appointment by the office will end upon the filing of proceeding for federal habeas corpus review or for appointment of counsel to represent the defendant in federal habeas corpus proceedings. However, the office may continue representation if the office or a staff attorney employed by the office shall be appointed by a federal court to represent the inmate in federal habeas corpus proceedings. In such event, the office or the employee attorney shall apply to the federal court for compensation and expenses and shall upon receipt of payments by the federal court pay all sums received over to the office for deposit in the Special Capital Post-Conviction Counsel Fund as provided in Section 99-39-117, from which all expenses for investigation and litigation shall be disbursed. Representation in post-conviction proceedings shall further include representation of the inmate from the exhaustion of all state and federal post-conviction litigation until execution of the sentence or an adjudication resulting in either a new trial or a vacation of the death sentence. The attorneys appointed to serve in the Office of Capital Post-Conviction Counsel shall devote their entire time to the duties of the office, shall not represent any persons in other litigation, civil or criminal, nor in any other way engage in the practice of law, and shall in no manner, directly or indirectly, participate in the trial of any person charged with capital murder or direct appeal of any person under sentence of death in the state, nor engage in lobbying activities for or against the death penalty. Any violation of this provision shall be grounds for termination from employment, in the case of the director, by the Governor, and in the case of other attorneys, by the director, with approval of the Chief Justice.

HISTORY: Laws, 2000, ch. 569, § 4; Laws, 2009, ch. 335, § 2, eff from and after passage (approved Mar. 16, 2009).

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

Special Capital Post-Conviction Counsel Fund, see § 99-39-117.

JUDICIAL DECISIONS

1. Right to counsel.

Where petitioner state death row inmate argued his due process rights were violated in that counsel was appointed to represent him at the state post-conviction collateral relief stage under Miss. Code Ann. §§ 99-39-103, 99-39-107, but the representation, owing to systemic and other flaws, was completely deficient under Miss. App. R. 22, that argument was rejected for purposes of habeas relief because even with 28 U.S.C.S. § 2261, there was no constitutional right to counsel beyond the direct appeal and ineffectiveness of post-conviction counsel could not be the grounds for habeas relief. Stevens v. Epps, 2008 U.S. Dist. LEXIS 69564 (S.D. Miss. Sept. 15, 2008), aff'd, 618 F.3d 489, 2010 U.S. App. LEXIS 18696 (5th Cir. Miss. 2010).

§ 99-39-109. Compensation.

The director appointed under this article shall be compensated at no more than the maximum amount allowed by statute for a district attorney, and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney.

HISTORY: Laws, 2000, ch. 569, § 5, eff from and after July 1, 2000.

Cross References — Salaries of district attorneys and assistant district attorneys, see § 25-3-35.

District attorneys generally, see §§ 25-31-1 et seq.

Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

§ 99-39-111. Office hours of operation.

The Director of the Office of Post-Conviction Counsel shall keep the office open Monday through Friday for not less than eight (8) hours each day.

HISTORY: Laws, 2000, ch. 569, § 6, eff from and after July 1, 2000.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

§ 99-39-113. Powers and duties of director; requirement of surety bond.

In addition to the authority to represent persons under sentence of death in state post-conviction proceedings, the director is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of staff and to establish their salaries, and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to solicit and accept monies, gifts, grants or services from any public or private sources for the purpose of funding, operating and executing the statutory duties of the office; to enter into and perform contracts, including but not limited to, contracts and agreements necessary to obtain and receive monies, gifts, grants or services from federal, public and private sources, and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices; and to incur and pay such other expenses as are appropriate and customary to the operations of the office. The director shall be required to obtain a surety bond in the amount of not less than One Hundred Thousand Dollars ($100,000.00) payable to the state. The cost of such bond shall be paid out of funds appropriated for the operations of the office. All salaries and other expenditures shall be paid from funds appropriated for such purposes augmented by funds received as gifts and grants from public and private sources.

HISTORY: Laws, 2000, ch. 569, § 7, eff from and after July 1, 2000.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.
Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.
Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.
Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.
Appointment of post-conviction counsel in capital cases, see § 99-39-23.

§ 99-39-115. Director to keep a docket of all death penalty cases in Mississippi.

The director shall keep a docket of all death penalty cases originating in the courts of Mississippi, which must at all reasonable times be open to the inspection of the public and must show the county, district and court in which the causes have been instituted. The director shall prepare and maintain a roster of all death penalty cases originating in the courts of Mississippi and pending in state and federal courts indicating the current status of each such case, and a history of those death penalty cases filed since 1976. Copies of such dockets and rosters shall be submitted to the Governor, Chief Justice of the Supreme Court and the Administrative Office of Courts monthly. The director shall also report monthly to the Administrative Office of Courts the activities, receipts and expenditures of the office.

HISTORY: Laws, 2000, ch. 569, § 8; Laws, 2009, ch. 335, § 3, eff from and after passage (approved Mar. 16, 2009).

Cross References — Circuit court clerk to maintain docket of cases, see § 9-7-175.
Public defenders, generally, see §§ 25-32-1 et seq.
Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.
Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.
Appointment of post-conviction counsel in capital cases, see § 99-39-23.

§ 99-39-117. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; Capital Post-Conviction Counsel Fund.

(1) If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, not withstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses, approved by order of the appropriate court, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated to the Capital Post-Conviction Counsel Fund for this purpose.

(2) There is created in the State Treasury a special fund to be known as the Capital Post-Conviction Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Post-Conviction Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Post-Conviction Counsel. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Post-Conviction Counsel;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

HISTORY: Laws, 2000, ch. 569, § 9; Laws, 2005, ch. 413, § 3, eff from and after July 1, 2005.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.
Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.
Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.
Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.
Appointment of post-conviction counsel in capital cases, see § 99-39-23.
Director authorized to solicit funds for purpose of funding and operating office, see § 99-39-119.

§ 99-39-119. Director authorized to solicit funds for purpose of funding and operating office.

The director is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

HISTORY: Laws, 2000, ch. 569, § 10, eff from and after July 1, 2000.

Cross References — Public defenders, generally, see §§ 25-32-1 et seq.

Compensation of counsel in post-conviction relief cases involving the death penalty, see § 99-15-18.

Mississippi Capital Defense Litigation Act, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Appointment of post-conviction counsel in capital cases, see § 99-39-23.

Capital Post-Conviction Counsel Fund, see § 99-39-117.

CHAPTER 40.

INDIGENT APPEALS DIVISION

Sec.
99-40-1. Indigent Appeals Division created; director and staff; compensation; duties; Indigent Appeals Fund; Public Defender Training Division created; Public Defenders Education Fund.

§ 99-40-1. Indigent Appeals Division created; director and staff; compensation; duties; Indigent Appeals Fund; Public Defender Training Division created; Public Defenders Education Fund.

(1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the Indigent Appeals Director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of an assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload as determined by the State Defender, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Indigent Appeals Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Trea-

surer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Indigent Appeals Division;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(4)(a) There is created in the Office of the State Public Defender the Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

(b) There is created in the State Treasury a special fund to be known as the Public Defenders Education Fund. The purpose of the fund shall be to provide funding for the training of public defenders. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(i) Monies appropriated by the Legislature for the purposes of public defender training;

(ii) The interest accruing to the fund;

(iii) Monies received under the provisions of Section 99-19-73;

(iv) Monies received from the federal government;

(v) Donations; and

(vi) Monies received from such other sources as may be provided by law.

HISTORY: Laws, 2005, ch. 413, § 1; Laws, 2006, ch. 560, § 1; Laws, 2007, ch. 559, § 2; Laws, 2011, ch. 343, § 10, eff from and after July 1, 2011.

Editor's Notes — Laws of 2011, ch. 343, § 12, effective July 1, 2011, provides: "SECTION 12. Notwithstanding any other provision of this act, it is the intent of the Legislature that the Directors of the Mississippi Office of Capital Defense Counsel, the Mississippi Office of Indigent Appeals and the Division of Public Defender Training holding those offices as of the effective date of this act shall continue as the directors of their respective offices or division for the term to which appointed unless terminated for cause, but that any vacancies in the office of division director on or after the effective date of this act shall be filled as provided in Sections 99-18-3 and 99-40-1, as amended by this act."

Cross References — Appointment of counsel for indigents, see § 99-15-15.

Public defenders, see §§ 25-32-1 et seq.

Representation provided for indigent defendants in capital cases, see §§ 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see §§ 99-39-1 et seq.

Mississippi Capital Post-Conviction Counsel Act, see §§ 99-39-101 et seq.

Standard state monetary assessment for certain violations, misdemeanors and felonies, see § 99-19-73.

Appointed trial counsel may file motions to substitute the Mississippi Office of Indigent Appeals, see M.R.App.P. 6.

RESEARCH REFERENCES

Law Reviews.

Comment: Salvation Lies Within: Why the Mississippi Supreme Court Can and Should Step In to Solve Mississippi's Indigent Defense Crisis, 74 Miss. L.J. 213, Fall, 2004.

CHAPTER 41.

MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT

Sec.

99-41-1. Short title.
99-41-3. Legislative intent.
99-41-5. Definitions.
99-41-7. Division of Victim Compensation; Director of Victim Compensation; duties; appointment.
99-41-9. Powers and duties of division.
99-41-11. Additional powers and duties of director; conduct of hearing; record.
99-41-13. Appeals.
99-41-15. Filing of claim as waiver of physician-patient confidentiality; ordering mental or physical examination or autopsy.
99-41-17. Compensation awards; conditions; exceptions; reduction.
99-41-19. Proof of conviction as evidence; suspension of proceedings pending prosecution.
99-41-21. Repayment of compensation; subrogation of state.
99-41-23. Calculation of award; payment in installments; assignment of award.
99-41-25. Advance award.
99-41-27. False claims; penalty.
99-41-29. Crime Victims' Compensation Fund; funding of expenses of Crime Victims Compensation Fund program; deposit of user charges and fees authorized under this section into State General Fund.
99-41-31. Disclosure of records as to claims; confidentiality of records.

§ 99-41-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Crime Victims' Compensation Act."

HISTORY: Laws, 1990, ch. 509, § 1, eff from and after July 1, 1991.

Cross References — Community service restitution, see §§ 99-20-1 et seq.
Victim Assistance Coordinator, see §§ 99-36-1 et seq.
Restitution to victims of crimes, generally, see §§ 99-37-1 et seq.
Crime Victim's Escrow Account Act, see §§ 99-38-1 et seq.

§ 99-41-3. Legislative intent.

It is the intent of the Legislature to provide a method of compensating those persons who are innocent victims of criminal acts within the state and who suffer bodily injury or death and of assisting victims of crime through information referrals and advocacy outreach programs. To this end, it is the Legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons. It is the further intent of the Legislature that all agencies, departments, boards and commissions of the state and political subdivisions of the state shall cooperate with the Attorney General's Office in carrying out the provisions of this chapter.

HISTORY: Laws, 1990, ch. 509, § 2; Laws, 2004, ch. 355, § 3; Laws, 2005, ch. 507, § 2, eff from and after July 1, 2005.

RESEARCH REFERENCES

ALR.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

§ 99-41-5. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

(a) "Allowable expense" means reasonable charges incurred for reasonably needed:

(i) Products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care, but not to exceed Fifteen Thousand Dollars ($15,000.00);

(ii) Mental health counseling and care not to exceed Three Thousand Five Hundred Dollars ($3,500.00) for the victim and victim's family member; provided, however, if there is more than one (1) family member, the amount of compensation awarded shall be prorated and not to exceed Three Thousand Five Hundred Dollars ($3,500.00);

(iii) Expenses related to funeral, cremation or burial, but not to exceed a total charge of Six Thousand Five Hundred Dollars ($6,500.00) and transportation costs to arrange or attend services, but not to exceed Eight Hundred Dollars ($800.00); and

(iv) Necessary expenses, including, but not limited to, temporary housing and relocation assistance for victims of domestic violence in imminent danger, crime scene cleanup, court-related travel, execution travel, property damage repair and replacement costs for windows, doors, locks or other security devices of a residential dwelling. The division shall establish, by administrative rule, guidelines and monetary limits for such expenses.

(b) "Claimant" means any of the following persons applying for compensation under this chapter:

(i) A victim;

(ii) A dependent of a victim who has died because of criminally injurious conduct;

(iii) The surviving parent, spouse, child or any person who is legally obligated to pay or has paid medical, funeral or other allowable expenses incurred as a result of the criminally injurious conduct which caused the victim's injuries and/or death;

(iv) Family members of the victim who incur mental health counseling expenses as a result of the criminally injurious conduct which caused the victim's injuries and/or death; or

(v) A person authorized to act on behalf of any of the persons enumerated in subparagraphs (i), (ii), (iii) and (iv) of this paragraph; however, "claimant" shall not include any of the following: provider or creditor of victim; assignee of provider or creditor, including a collection agency; or another person or entity other than those enumerated in this paragraph.

(c) "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this chapter which the claimant has received, or which is readily available to the claimant, from any one or more of the following:

(i) The offender;

(ii) The government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality of two (2) or more states;

(iii) Social security, Medicare and Medicaid;

(iv) Workers' compensation;

(v) Wage continuation programs of any employer;

(vi) Proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct;

(vii) A contract providing prepaid hospital and other health care services or benefits for disability; or

(viii) Any temporary nonoccupational disability insurance.

(d) "Criminally injurious conduct" means an act occurring or attempted within the geographical boundaries of this state, or to a resident of Mississippi while that resident is within any other state of the United States or any foreign country, which state or foreign country does not provide compensation for those injuries caused by an act for which compensation would be available had the act occurred in Mississippi, and which act results in personal injury or death to a victim for which punishment by fine, imprisonment or death may be imposed. For purposes of this chapter, "criminally injurious conduct" shall also include federal offenses committed within the state that result in personal injury or death to a victim and which are punishable by fine, imprisonment or death, and delinquent acts as defined in Section 43-21-105 which result in personal injury or death to a victim and which, if committed by an adult, would be a crime punishable by fine, imprisonment or death.

(e) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

(f) "Economic loss of a dependent" means loss, after death of the victim, of contributions or things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim.

(g) "Economic loss" means monetary detriment consisting only of allowable expense, work loss and, if injury causes death, economic loss of a dependent, but shall not include noneconomic loss or noneconomic detriment.

(h) "Family member" means the victim's spouse, parent, grandparent, stepparent, child, stepchild, grandchild, brother, sister, half brother, half sister or spouse's parent.

(i) "Hospital ancillary services" means those hospital support services other than room, board and medical and nursing services that are provided to hospital patients in the course of care including, but not limited to, laboratory, radiology, pharmacy and physical therapy services.

(j) "Noneconomic loss or detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

(k) "Work loss" means loss of income from work the victim or claimant would have performed if the victim had not been injured, but reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing, but unreasonably failed to undertake.

(*l*) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct, regardless of whether that person was the intended victim of the criminally injurious conduct. This definition may include a person who suffers personal injury or death as a result of criminally injurious conduct while going to the aid of another person or a duly sworn law enforcement officer, or while attempting to prevent a crime from occurring.

HISTORY: Laws, 1990, ch. 509, § 3; Laws, 1996, ch. 506, § 1; Laws, 1998, ch. 484, § 1; Laws, 2002, ch. 352, § 1; Laws, 2004, ch. 355, § 4; Laws, 2007, ch. 587, § 2; Laws, 2012, ch. 503, § 1, eff from and after July 1, 2012.

OPINIONS OF THE ATTORNEY GENERAL

The words of limitation expressed in § 99-41-5(b)(iii) preclude an estate from being a claimant under the Crime Victims' Compensation Program. Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

The Crime Victims' Compensation Program is justified in withholding an award of compensation until the medical provider has determined what, if any, discount will be given to the claimant and made demand for payment on claimant. Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

There is no authority to give an award of compensation prior to the medical provider determining what, if any, discount will be given, and has demanded payment. Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

A discount program provided by a medical provider for individuals who may not be in a financial position to pay for medical services could be considered "a source of benefits or advantages" to be considered as a collateral source under § 99-41-5(c) and/or an "other source" under § 99-41-17(2)(a). Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

RESEARCH REFERENCES

ALR.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

§ 99-41-7. Division of Victim Compensation; Director of Victim Compensation; duties; appointment.

There is hereby created in the Attorney General's Office the Division of Victim Compensation, hereafter referred to as "division." In the Division of Victim Compensation there is hereby created the position of Director of Victim Compensation, hereafter referred to as "director." The duties of the director shall include receipt, investigation, verification and adjudication of a claim for compensation under the provisions of this chapter. The duties shall also include facilitating assistance to victims of crime through information referrals, advocacy outreach programs and other victim-related services. The director shall be appointed by the Attorney General.

HISTORY: Laws, 1990, ch. 509, § 4; Laws, 1996, ch. 506, § 2; Laws, 2004, ch. 355, § 5; Laws, 2005, ch. 507, § 3; Laws, 2007, ch. 587, § 3, eff from and after July 1, 2007.

Cross References — Additional powers and duties of director, see § 99-41-11.
False claims, penalties, see § 99-41-27.

§ 99-41-9. Powers and duties of division.

In addition to any other powers and duties specified elsewhere in this chapter, the division is hereby authorized to:

(a) Except as otherwise provided by this chapter, regulate the procedures for the director to expedite his functions and adopt rules and regulations for the position of director;

(b) Define any term not defined in this chapter in a manner not inconsistent with this chapter;

(c) Prescribe forms necessary to carry out the purposes of this chapter and make such forms available for use in making applications for compensation;

(d) Authorize the director to take judicial notice of general, technical and scientific facts within the director's specialized knowledge;

(e) Publicize the availability of compensation and information regarding the filing of claims and ask that public officials and law enforcement agencies take reasonable care that victims be informed about the availability of compensation and the procedure for applying for compensation;

(f) Apply for funds from and to submit all necessary forms to any federal agency participating in a cooperative program to compensate victims of crimes, and to apply for and accept any gifts, bequests, grants, donations or funds from other sources, public or private, for carrying out the provisions of this chapter; and

(g) Adopt such rules and regulations as shall be necessary for carrying out the provisions of this chapter.

HISTORY: Laws, 1990, ch. 509, § 5; Laws, 1996, ch. 506, § 3; Laws, 2004, ch. 355, § 6, eff from and after passage (approved Apr. 20, 2004).

RESEARCH REFERENCES

ALR.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-11. Additional powers and duties of director; conduct of hearing; record.

(1) The director shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) The director shall make such investigations, administer such oaths or affirmations and receive such evidence as he deems relevant and necessary to make a determination on any application received. The director shall have the power to subpoena witnesses, compel their attendance and require the production of records and other evidence. Application to a court for aid in enforcing a subpoena may be made in the name of the director. To the extent that funds are appropriated or otherwise available, the Attorney General may employ such personnel, including expert witnesses, as may be required in connection with particular applications before the director, and the director may take judicial notice of general, technical and scientific facts within his specialized knowledge.

(3) The director may settle a claim by stipulation, agreed settlement, consent order or default.

(4) The director may request access to and obtain from prosecuting attorneys or law enforcement officers, as well as state and local agencies, any reports of investigations or other data necessary to assist the director in making a determination of eligibility for compensation under the provisions of this chapter.

(5) Notwithstanding any other provision of law, every law enforcement agency and prosecuting attorney in the state shall provide to the director, upon request, a complete copy of the report regarding the incident and any supplemental reports involving the crime or incident giving rise to a claim filed pursuant to this chapter within thirty (30) days of such request.

(6) Any statute providing for the confidentiality of a claimant or victim's court record shall not be applicable under this chapter, notwithstanding the provisions of any other law to the contrary; provided, however, any such record or report which is otherwise protected from public disclosure by the provisions of any other law shall otherwise remain subject to the provisions of such law.

(7) The director may require that the claimant submit with the application material substantiating the facts stated in the application.

(8) After processing an application for compensation filed under rules and regulations promulgated by the Attorney General, the director shall enter an order stating:

(a) Findings of fact;

(b) The decision as to whether or not compensation shall be awarded;

(c) The amount of compensation, if any, due under this chapter;

(d) The person or persons to whom any compensation should be paid;

(e) The percentage share of the total of any compensation award and the dollar amount each person shall receive; and

(f) Whether disbursement of any compensation awarded shall be made in a lump sum or in periodic payments.

(9) The director on his own motion or on request of the claimant may reconsider a decision granting or denying an award or determining its amount. An order on reconsideration of an award shall not require a refund of amounts previously paid unless the award was obtained by fraud or upon finding that the victim's or claimant's actions and/or circumstances would no longer make the victim or claimant eligible.

(10) If a claimant disagrees with the decision of the director, he may contest such decision to the Attorney General within thirty (30) days after notification of issuance of the decision. There shall be no appeal of a decision of the director except as set forth in this subsection.

(11) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice pursuant to regulations promulgated pursuant to this chapter and may offer evidence and argument on any issue relevant to the claim and may examine witnesses and offer evidence in reply to any matter of an evidentiary nature relevant to the claim. The Attorney General shall have the power to subpoena witnesses, compel their attendance and require the production of records and other evidence. The decision of the Attorney General becomes the final decision. A record of the hearing in a contested case shall be made and shall be transcribed upon request of any party who shall pay transcription costs unless otherwise ordered by the Attorney General.

HISTORY: Laws, 1990, ch. 509, § 6; Laws, 1996, ch. 506, § 4; Laws, 2000, ch. 577, § 1; Laws, 2004, ch. 355, § 7; Laws, 2007, ch. 587, § 4; Laws, 2012, ch. 503, § 2, eff from and after July 1, 2012.

Cross References — Additional duties of director, see § 99-41-7.
Appeal of compensation order, see § 99-41-13.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 99-41-11 the District Attorney's office may advise the Victim Compensation Hearing Officer that a particular person has not been indicted by a particular grand jury. McDonald, January 10, 1996, A.G. Op. #95-0860.

RESEARCH REFERENCES

ALR.
Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-13. Appeals.

Any claimant aggrieved by a final decision of the Attorney General shall be entitled to judicial review thereof in the manner provided in this section.

(a) An appeal may be taken by such claimant to the circuit court of the claimant's residence or the Circuit Court of the First Judicial District of Hinds County by filing a petition with the clerk of the court and executing and filing bond payable to the State of Mississippi with sufficient sureties to be approved by the clerk of the court, conditioned upon the payment of all costs of appeal, including the cost of preparing the transcript of the hearing before the Attorney General. The petition and bond shall be filed within thirty (30) days of the receipt of the final decision of the Attorney General. Upon approval of the bond, the clerk of the court shall notify the Office of the Attorney General, which shall prepare its record in the matter and transmit it to the circuit court.

(b) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the Attorney General to determine if the action of the Attorney General is unlawful for the reason that it was:

(i) Not supported by a preponderance of the evidence;

(ii) Arbitrary and capricious; or

(iii) In violation of a statutory right of claimant.

(c) No relief shall be granted based upon the court's finding of harmless error.

(d) Any party aggrieved by action of the circuit court may appeal to the Supreme Court in the manner provided by law.

HISTORY: Laws, 1990, ch. 509, § 7; Laws, 1996, ch. 506, § 5; Laws, 2000, ch. 577, § 2; Laws, 2004, ch. 355, § 8, eff from and after passage (approved Apr. 20, 2004).

Cross References — Appeals to the Supreme Court generally, see §§ 99-35-101 et seq.

§ 99-41-15. Filing of claim as waiver of physician-patient confidentiality; ordering mental or physical examination or autopsy.

(1) Any person filing a claim under the provisions of this chapter shall be deemed to have waived any physician-patient privilege as to the communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant. However, any record or report obtained by the director, the confidentiality of which is otherwise protected by any other law or regulation, shall remain confidential, subject to such law or regulation.

(2) If the mental, physical or emotional condition of a claimant is material to a claim, the director, upon good cause shown, may order the claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made. The order shall also require the person to file with the director a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report, including the results of all tests made, the diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions.

(3) The director shall furnish a copy of the report examined. If the victim is deceased the director shall furnish a copy of the report to the claimant on request.

(4) The director may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

HISTORY: Laws, 1990, ch. 509, § 8; Laws, 1996, ch. 506, § 6, eff from and after July 1, 1996.

Cross References — False claims, penalties, see § 99-41-27.

§ 99-41-17. Compensation awards; conditions; exceptions; reduction.

(1) Compensation shall not be awarded under this chapter:

(a) Unless the criminally injurious conduct occurred after July 1, 1991;

(b) Unless the claim has been filed with the director within thirty-six (36) months after the crime occurred, or in cases of child sexual abuse, within thirty-six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the victim's twenty-fifth birthday. For good cause, the director may extend the time period allowed for filing a claim for an additional period not to exceed twelve (12) months;

(c) To a claimant or victim who was the offender or an accomplice to the offender, or, except in cases of children under the age of consent as specified in Section 97-3-65, 97-3-97 or 97-5-23, Mississippi Code of 1972, who encouraged or in any way knowingly participated in criminally injurious conduct;

(d) To another person, if the award would unjustly benefit the offender or accomplice;

(e) Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or unless it is found that there was good cause for the failure to report within such time;

(f) To any claimant or victim when the injury or death occurred while the victim was confined in any federal, state, county or city jail or correctional facility;

(g) If the victim was injured as a result of the operation of a motor vehicle, boat or airplane, unless the vehicle was used by the offender (i) while under the influence of alcohol or drugs, (ii) as a weapon in the deliberate attempt to injure or cause the death of the victim, (iii) in a hit-and-run accident by leaving the scene of an accident as specified in Section 63-3-401, (iv) to flee apprehension by law enforcement as specified in Sections 97-9-72 and 97-9-73, or (v) causes any injury to a child who is in the process of boarding or exiting a school bus in the course of a violation of Section 63-3-615;

(h) If, following the filing of an application, the claimant failed to take further steps as required by the division to support the application within forty-five (45) days of such request made by the director or failed to otherwise cooperate with requests of the director to determine eligibility, unless failure to provide information was beyond the control of the claimant;

(i) To a claimant or victim who, subsequent to the injury for which application is made, is convicted of any felony, and the conviction becomes known to the director;

(j) To any claimant or victim who has been under the actual or constructive supervision of a department of corrections for a felony conviction within five (5) years prior to the injury or death for which application has been made;

(k) To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim for compensation is based that either was (i) a felony, or (ii) a delinquent act which, if committed by an adult, would constitute a felony;

(*l*) To any claimant or victim who knowingly furnishes any false or misleading information or knowingly fails or omits to disclose a material fact or circumstance.

(2) Compensation otherwise payable to a claimant shall be diminished to the extent:

(a) That the economic loss is recouped from other sources, including collateral sources; and

(b) Of the degree of responsibility for the cause of injury or death attributable to the victim or claimant.

(3) Upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies and prosecuting attorneys, an award of compensation may be denied, withdrawn or reduced.

(4) Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based.

HISTORY: Laws, 1990, ch. 509, § 9; Laws, 1996, ch. 506, § 7; Laws, 1998, ch. 484, § 2; Laws, 2000, ch. 577, § 3; Laws, 2004, ch. 355, § 9; Laws, 2007, ch. 587, § 5; Laws, 2012, ch. 503, § 3; Laws, 2013, ch. 376, § 1, eff from and after July 1, 2013.

Cross References — Calculation of award, see § 99-41-23.

Advance award, see § 99-41-25.

False claims, penalties, see § 99-41-27.

Crime Victims' Compensation Fund created to provide for the payment of awards of compensation, see § 99-41-29.

OPINIONS OF THE ATTORNEY GENERAL

A discount program provided by a medical provider for individuals who may not be in a financial position to pay for medical services could be considered "a source of benefits or advantages" to be considered as a collateral source under § 99-41-5(c) and/or an "other source" under § 99-41-17(2)(a). Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

The Crime Victims' Compensation Program is justified in withholding an award of compensation until the medical provider has determined what, if any, discount will be given to the claimant and made demand for payment on claimant. Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

There is no authority to give an award of compensation prior to the medical provider determining what, if any, discount will be given, and has demanded payment. Anderson, Oct. 25, 2002, A.G. Op. #02-0498.

RESEARCH REFERENCES

ALR.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

§ 99-41-19. Proof of conviction as evidence; suspension of proceedings pending prosecution.

Proof of conviction of a person whose acts give rise to a claim shall be conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction or certiorari is pending or unless a rehearing and new trial has been ordered. The director may suspend the proceedings before it pending disposition of a criminal prosecution that has been commenced or is imminent.

HISTORY: Laws, 1990, ch. 509, § 10; Laws, 1996, ch. 506, § 8, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am. Jur.

29 Am. Jur. 2d, Evidence §§ 409 et seq.

§ 99-41-21. Repayment of compensation; subrogation of state.

(1) If compensation is awarded the state shall be subrogated to all the rights of a claimant or victim to receive or recover from a collateral source to the extent that compensation was awarded.

(2) In the event that the claimant or victim recovers compensation, other than under the provisions of this chapter, for injuries or death resulting from criminally injurious conduct, the claimant or victim shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Crime Victims' Compensation Fund, as created in Section 99-41-29, to the extent that compensation was awarded to the claimant or victim from such fund. Such

funds as are retained in trust under the provisions of this section shall be promptly deposited in the Crime Victims' Compensation Fund created in Section 99-41-29.

(3) If a claimant or victim brings an action to recover damages related to the criminally injurious conduct upon which compensation is claimed or awarded, the claimant shall give the director written notice of the action. After receiving such notice the director may join in the action as a party plaintiff to recover any compensation awarded.

HISTORY: Laws, 1990, ch. 509, § 11; Laws, 1996, ch. 506, § 9; Laws, 2012, ch. 503, § 4, eff from and after July 1, 2012.

RESEARCH REFERENCES

ALR.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-23. Calculation of award; payment in installments; assignment of award.

(1) Compensation for work loss may not exceed Six Hundred Dollars ($600.00) per week, not to exceed fifty-two (52) weeks; the total amount of the award may not exceed the aggregate limitation of this section.

(2) Compensation for economic loss of a dependent may not exceed Six Hundred Dollars ($600.00) per week not to exceed fifty-two (52) weeks; provided, however, if there is more than one (1) dependent per victim the amount of compensation awarded shall be prorated among the dependents and the total amount of the award may not exceed the aggregate limitation of this section.

(3) In the event of the victim's death, compensation for work loss of claimant may not exceed Six Hundred Dollars ($600.00) per week not to exceed one (1) week; provided, however, if there is more than one (1) claimant per victim, the amount of compensation awarded shall be prorated among the claimants and the total amount of the award may not exceed Six Hundred Dollars ($600.00).

(4) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed Twenty Thousand Dollars ($20,000.00) in the aggregate.

(5) A determination that compensation shall be awarded may provide for payment to a claimant in a lump sum or in installments. All medical bills may be paid directly to affected health care providers. At the request of the claimant, the director may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding of either of the following:

(a) That the award in a lump sum will promote the interests of the claimant; or

(b) That the present value of all future economic loss, other than allowable expense, does not exceed One Thousand Dollars ($1,000.00).

(6) An award payable in installments for future economic loss may be

made only for a period as to which the future economic loss can reasonably be determined. An award payable in installments for future economic loss may be modified upon findings that a material and substantial change of circumstances has occurred.

(7) If a hospital or hospital ancillary service provider accepts payment from the division on behalf of the victim or claimant, the division may require that the provider shall not collect or attempt to collect further payment from the victim, the claimant, or the division, except that hospital and hospital ancillary service providers may collect or attempt to collect from collateral sources available to the victim or the claimant. The division may also make any such payment contingent upon the provider limiting its right to collect from the victim, the claimant, or the division; or contingent upon the provider entering into a covenant not to sue the victim, the claimant or the division.

(8) An award shall not be subject to execution, attachment, garnishment or other process, except that an award shall not be exempt from orders for the withholding of support for minor children in accordance with Section 93-11-71, and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

(9) An assignment by the claimant to any future award under the provisions of this chapter is unenforceable, except:

(a) An assignment of any award for work loss to assure payment of court-ordered alimony, maintenance or child support; or

(b) An assignment for any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and which are provided or are to be provided by the assignee.

(10) Subsections (8) and (9) of this section prevail over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that Sections 75-9-406 and 75-9-408 may otherwise be applicable.

HISTORY: Laws, 1990, ch. 509, § 12; Laws, 1996, ch. 506, § 10; Laws, 1998, ch. 484, § 3; Laws, 2000, ch. 577, § 4; Laws, 2001, ch. 495, § 32; Laws, 2002, ch. 352, § 2; Laws, 2007, ch. 587, § 6; Laws, 2012, ch. 503, § 5, eff from and after July 1, 2012.

Cross References — Award conditions, exceptions, reduction, see § 99-41-17.
Advance award, see § 99-41-25.
False claims, penalties, see § 99-41-27.
Federal Aspects— Victims of child abuse act of 1990, P. L. 101-647 §§ 201 et seq.

RESEARCH REFERENCES

ALR.
Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-25. Advance award.

If the director determines that the claim is one with respect to which an award probably will be made and the claimant will suffer financial hardship unless an advance award is made, an amount may be paid to the claimant not to exceed Five Hundred Dollars ($500.00) and shall be deducted from the final award or shall be repaid by and recoverable from the claimant to the extent that it exceeds the final award.

HISTORY: Laws, 1990, ch. 509, § 13; Laws, 1996, ch. 506, § 11; Laws, 2000, ch. 577, § 5, eff from and after July 1, 2000.

Cross References — Award conditions, exceptions, reduction, see § 99-41-17.
Calculation of award, see § 99-41-23.
False claims, penalties, see § 99-41-27.

RESEARCH REFERENCES

ALR.
Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-27. False claims; penalty.

(1) Claims shall be made under oath. The filing of a false claim for compensation pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine of not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment, and the person convicted shall, as part of the sentence in either case, be required to repay to the Crime Victims' Compensation Fund the amount received pursuant to the false claim.

(2) Any person who shall knowingly furnish any false information or knowingly fails or omits to disclose a material fact or circumstance with the intent to defraud the division for compensation pursuant to this chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or both, and the person convicted shall, as part of the sentence in either case, be required to repay to the Crime Victims' Compensation Fund the total amount received pursuant to the false claim.

(3) If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient of the compensation award or other circumstances of a similar nature not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compensation. The division may waive, decrease or adjust the amount of the repayment of the compensation.

HISTORY: Laws, 1990, ch. 509, § 14; Laws, 1996, ch. 506, § 12; Laws, 2004, ch. 355, § 10, eff from and after passage (approved Apr. 20, 2004).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.
Award conditions, exceptions, reduction, see § 99-41-17.
Calculation of award, see § 99-41-23.
Advance award, see § 99-41-25.

§ 99-41-29. Crime Victims' Compensation Fund; funding of expenses of Crime Victims Compensation Fund program; deposit of user charges and fees authorized under this section into State General Fund.

(1) From and after July 1, 1990, there is hereby created in the State Treasury a special interest-bearing fund to be known as the Crime Victims' Compensation Fund. The monies contained in the fund shall be used for the sole purpose of payment of awards of compensation to victims and claimants pursuant to this chapter, the payment of all necessary and proper expenses incurred by the division in the administration of this chapter, payment of sexual assault examinations pursuant to Section 99-37-25, payment of Address Confidentiality Program administrative expenses pursuant to Section 99-47-1(7) and payment of other expenses in furtherance of providing assistance to victims of crime through information referrals, advocacy outreach programs and victim-related services. Expenditures from the fund shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, and upon requisitions signed by the Attorney General or his duly designated representative in the manner provided by law. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of compensating the victims of crime and other claimants under this chapter; (b) the interest accruing to the fund; (c) monies recovered by the director under the provisions of Section 99-41-21; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

(2) No compensation payments shall be made which exceed the amount of money in the fund. The state shall not be liable for a written order to pay compensation, except to the extent that monies are available in the fund on the date the award is ordered. The Attorney General shall establish such rules and regulations as shall be necessary to adjust awards and payments so that the total amount awarded does not exceed the amount of money on deposit in the fund. Such rules and regulations may include, but shall not be limited to, the authority to provide for suspension of payments and proportioned reduction of benefits to all claimants; provided, however, no such reductions as provided for shall entitle claimants to future retroactive reimbursements in future years.

(3) From and after July 1, 2016, the expenses of the Crime Victims Compensation Fund program (including the Crime Victims Compensation Administration Fund) shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1990, ch. 509, § 15; Laws, 1993, ch. 517, § 1; Laws, 1994, ch. 388, § 1; Laws, 1996, ch. 506, § 13; Laws, 2004, ch. 355, § 11; Laws, 2007, ch. 587,

§ 7; Laws, 2012, ch. 503, § 6; Laws, 2017, 1st Ex Sess, ch. 7, § 45, eff from and after passage (approved June 23, 2017).

Cross References — Portion of payments by offender on probation, parole, or earned probation to be paid into Crime Victims' Compensation Fund, see § 47-7-49.

Reimbursement of Crime Victim's Compensation Fund by claimant upon receipt of compensation from other source, see § 99-41-21.

Calculation of award, see § 99-41-23.

Advance award, see § 99-41-25.

RESEARCH REFERENCES

ALR.

Statutes providing for governmental compensation for victims of crime. 20 A.L.R.4th 63.

§ 99-41-31. Disclosure of records as to claims; confidentiality of records.

It is unlawful, except for purposes directly connected with the administration of the division and the processing of a claim, for any person to solicit, disclose, receive or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards under this chapter without the written consent of the claimant or recipient. The records, papers, files and communications of the division, director, staff and agents must be regarded as confidential information and privileged and not subject to disclosure under any condition including the Mississippi Public Records Act of 1983.

HISTORY: Laws, 2000, ch. 577, § 6; Laws, 2004, ch. 355, § 12; Laws, 2012, ch. 503, § 7, eff from and after July 1, 2012.

CHAPTER 43.

MISSISSIPPI CRIME VICTIMS' BILL OF RIGHTS

Sec.
99-43-1. Short title and purpose.
99-43-3. Definitions.
99-43-5. Designated and lawful representatives.
99-43-7. Law enforcement notice requirements; clerk of court notice requirements.
99-43-8. Victim's right to receive copy of initial incident report.
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99-43-13. Prosecutor's duty to confer with victim prior to trial; confidentiality.
99-43-15. Trial transcripts; right to receive if pay costs.
99-43-17. Victim not entitled to direct prosecution of case.
99-43-19. Freedom from delay; continuances.
99-43-21. Right to be present at criminal proceedings.
99-43-23. Separate waiting area; minimizing contact with defendant, defendant's relatives and defense witnesses.
99-43-25. Victim residence and identification information; petition, hearing and confidentiality.
99-43-27. Negotiated plea agreements; notice and presence.
99-43-29. Notice regarding disposition and sentencing.
99-43-31. Victim impact statements to probation officers; duty to consider victim impact.
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99-43-39. Return and release of victims' property.
99-43-41. Custodial agency notice requirements.
99-43-43. Victim statement or recording for Department of Corrections records; notice regarding parole or pardon proceedings; notice regarding change in custodial status proceedings.
99-43-45. Testimony and preparation for criminal proceeding free from threat or fear of losing employment.
99-43-47. Prosecutor assertion of victims' rights.
99-43-49. Failure to provide victim's right; effect; reasonable attempts to provide notice.
99-43-101. Rights of children testifying in criminal proceedings.

§ 99-43-1. Short title and purpose.

This chapter may be cited as the "Mississippi Crime Victims' Bill of Rights." The purpose of this chapter is to ensure the fair and compassionate treatment of victims of crime, to increase the effectiveness of the criminal justice system by affording rights and considerations to the victims of crime, and to preserve and protect victims' rights to justice and fairness in the criminal justice system.

HISTORY: Laws, 1998, ch. 577, § 1, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:
"SECTION 26. This act shall take effect and be in force from and after January 1,

1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Victim impact statement act, see §§ 99-19-151 et seq.

JUDICIAL DECISIONS

1. Victim impact statement.

Victim's sister testified as to the victim's role in her family and the community, that the victim moved to help her daughter raise her granddaughter in the country, and how the sister has now had to assume the victim's role as head of the family. The victim impact evidence offered was proper and necessary to a development of the case and true characteristics of the victim and could not serve in any way to incite the jury; thus, it was properly admitted. Branch v. State, 882 So. 2d 36, 2004 Miss. LEXIS 586 (Miss. 2004), cert. denied, 544 U.S. 907, 125 S. Ct. 1595, 161 L. Ed. 2d 282, 2005 U.S. LEXIS 2289 (U.S. 2005).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state constitutional or statutory victims' bill of rights. 91 A.L.R.5th 343.

§ 99-43-3. Definitions.

As used in this chapter, the following words shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial or who is a target of an investigation for committing a criminal offense.

(b) "Appellate proceeding" means an oral argument held in open court before the Mississippi Court of Appeals, the Mississippi Supreme Court, a federal court of appeals or the United States Supreme Court.

(c) "Arrest" means the actual custodial restraint of a person or his submission to custody.

(d) "Community status" means extension of the limits of the places of confinement of a prisoner through work release, intensive supervision, house arrest and initial consideration of pre-discretionary leave, passes and furloughs.

(e) "Court" means all state courts including juvenile courts.

(f) "Victim assistance coordinator" means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims.

(g) "Criminal offense" means conduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, a sexual offense, any offense involving spousal abuse or domestic violence has been committed.

(h) "Criminal proceeding" means a hearing, argument or other matter scheduled by and held before a trial court but does not include a lineup, grand jury proceeding or other matter not held in the presence of the court.

(i) "Custodial agency" means a municipal or county jail, the Department of Corrections, juvenile detention facility, Department of Youth Services or a secure mental health facility having custody of a person who is arrested or is in custody for a criminal offense.

(j) "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.

(k) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.

(*l*) "Immediate family" means the spouse, parent, child, sibling, grandparent or guardian of the victim, unless that person is in custody for an offense or is the accused.

(m) "Lawful representative" means a person who is a member of the immediate family or who is designated as provided in Section 99-43-5; no person in custody for an offense or who is the accused may serve as lawful representative.

(n) "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.

(o) "Post-conviction release" means parole or discharge from confinement by an agency having custody of the prisoner.

(p) "Post-conviction relief proceeding" means a hearing, argument or other matter that is held in any court and that involves a request for relief from a conviction, sentence or adjudication.

(q) "Prisoner" means a person who has been convicted or adjudicated of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the Department of Corrections, Department of Youth Services, juvenile detention facility, a municipal jail or a secure mental health facility.

(r) "Prosecuting attorney" means the district attorney, county prosecuting attorney, municipal prosecuting attorney, youth court prosecuting attorney, special prosecuting attorney or Attorney General.

(s) "Right" means any right granted to the victim by the laws of this state.

(t) "Victim" means a person against whom the criminal offense has been committed, or if the person is deceased or incapacitated, the lawful representative.

HISTORY: Laws, 1998, ch. 577, § 2; Laws, 2004, ch. 355, § 1, eff from and after passage (approved Apr. 20, 2004).

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:
"SECTION 26. This act shall take effect and be in force from and after January 1,

1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Probation and parole law generally, see §§ 47-7-1 et seq.

§ 99-43-5. Designated and lawful representatives.

(1) If a victim is physically or emotionally unable to exercise any right established by this chapter, but is able to designate in writing a lawful representative, the designated representative or person may exercise the same rights that the victim is entitled to exercise. The victim may revoke his or her designated representation at any time and thereafter personally exercise his or her rights.

(2) If a victim is incompetent, deceased or otherwise incapable of designating another person to act in his or her behalf, the court may appoint a lawful representative who is not a witness in the case. If at any time the victim is no longer incompetent, incapacitated, or otherwise incapable of acting, the victim may personally exercise his or her rights.

(3) If the victim is a minor, the parent, guardian or other immediate family of the victim, or a designated representative as determined by the court, may exercise all of the rights of the victim on behalf of the victim.

HISTORY: Laws, 1998, ch. 577, § 3, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Victim impact statement act, see §§ 99-19-151 et seq.

§ 99-43-7. Law enforcement notice requirements; clerk of court notice requirements.

(1) Unless the victim is unavailable or incapacitated as a result of the crime, within seventy-two (72) hours after the law enforcement agency becomes responsible for investigating the crime, the law enforcement agency

shall provide to the victim in a manner and form prescribed by the Attorney General the following information:

(a) The availability of emergency and crisis services.

(b) The availability of victims' compensation benefits and the address and telephone number of the Victim Compensation Division.

(c) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: "If within sixty (60) days you are not notified of an arrest in your case, you may call the telephone number of the law enforcement agency for the status of the case."

(d) The procedural steps involved in a criminal prosecution.

(e) The rights authorized by the Mississippi Constitution on rights of victims, including a form to invoke these rights.

(f) The existence of and eligibility requirements for restitution and compensation pursuant to Section 99-37-1 et seq. and Section 99-41-1 et seq., Mississippi Code of 1972.

(g) A recommended procedure if the victim is subjected to threats or intimidation.

(h) The name and telephone number of the office of the prosecuting attorney to contact for further information.

(2) In the event a victim initiates proceedings against a person by filing an affidavit, petition or complaint in a court of competent jurisdiction, the clerk of the court shall provide the victim with the information set forth in subsection (1); however, in lieu of the information set forth in subsection (1)(c), the clerk shall advise the victim of the name and telephone number of the law enforcement agency to which the complaint will be referred. This information shall be provided on a form prescribed by the Attorney General. Failure of the clerk of court to provide such information shall not subject the clerk to any criminal or civil liability.

HISTORY: Laws, 1998, ch. 577, § 4; Laws, 2007, ch. 587, § 8, eff from and after July 1, 2007.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Restitution to victims of crimes, see §§ 99-37-1 et seq.

Mississippi Crime Victims' Compensation Act, see §§ 99-41-1 et seq.

Prosecutor notice requirements upon written request of victim, see § 99-43-9.

Upon request for notice, custodial agency to provide victim certain information, see § 99-43-41.

§ 99-43-8. Victim's right to receive copy of initial incident report.

Upon request, the victim has the right to receive, from the appropriate law enforcement agency, free of charge, a copy of the initial incident report of the case subject to any confidentiality requirements provided by law.

HISTORY: Laws, 2012, ch. 518, § 2, eff from and after July 1, 2012.

Editor's Notes — Chapter 518, Laws of 2012, which enacted this section and amended § 97-35-47, is known as the Broderick Rashad Danti Dixon Act.

§ 99-43-9. Prosecutor notice requirements upon written request of victim.

(1) Upon written request of the victim, the prosecuting attorney shall notify the victim of all charges filed against the defendant and any criminal proceedings, other than initial appearances, as soon as practicable, including any changes that may occur.

(2) In order to be entitled to receive notice under this section, the victim shall provide to and maintain with the office of the prosecuting attorney a request for notice which shall include the telephone number and address of the victim. The request for notice shall be considered withdrawn and void in the event the victim fails to update this information as necessary. Except as otherwise provided, all notices provided to a victim pursuant to this chapter shall be on forms as specified by the Attorney General.

HISTORY: Laws, 1998, ch. 577, § 5, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Law enforcement notice requirements, see § 99-43-7.

Prosecutor's duty to confer with victim prior to disposition, see § 99-43-11.

Prosecutor's duty to confer with victim prior to trial, see § 99-43-13.

Upon request for notice, custodial agency to provide victim certain information, see § 99-43-41.

Statewide automated victim information and notification system generally, see §§ 99-45-1 et seq.

§ 99-43-11. Prosecutor's duty to confer with victim prior to disposition.

The prosecuting attorney shall confer with the victim prior to the final disposition of a criminal offense, including the views of the victim about a nol pros, reduction of charge, sentence recommendation, and pre-trial diversion programs.

HISTORY: Laws, 1998, ch. 577, § 6, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecutor's duty to confer with victim prior to trial, see § 99-43-13.

§ 99-43-13. Prosecutor's duty to confer with victim prior to trial; confidentiality.

The prosecuting attorney shall confer with the victim before the commencement of a trial. Any information received by the victim relating to the substance of the case shall be confidential, unless otherwise authorized by law or required by the courts to be disclosed.

HISTORY: Laws, 1998, ch. 577, § 7, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecutor's duty to confer with victim prior to disposition, see § 99-43-11.

Victim not entitled to direct prosecution of case, see § 99-43-17.

§ 99-43-15. Trial transcripts; right to receive if pay costs.

The victim has the right to receive a transcript of any criminal proceedings at his own cost.

HISTORY: Laws, 1998, ch. 577, § 8, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-17. Victim not entitled to direct prosecution of case.

The rights of the victim do not include the authority to direct the prosecution of the case.

HISTORY: Laws, 1998, ch. 577, § 9, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecutor's duty to confer with victim prior to trial, see § 99-43-13.

Right to be present at criminal proceedings, see § 99-43-21.

JUDICIAL DECISIONS

1. Applicability.

Prosecution did not delegate the decision of whether or not to seek the death penalty to the victim's family. Instead, the record showed that the State sought the death penalty after defendant rejected a plea deal. Hutto v. State, 227 So. 3d 963, 2017 Miss. LEXIS 180 (Miss. 2017), cert. denied, — U.S. —, 138 S. Ct. 983, 200 L. Ed. 2d 262, 2018 U.S. LEXIS 1361 (U.S. 2018).

§ 99-43-19. Freedom from delay; continuances.

The victim shall have the right to a final disposition of the criminal proceeding free from unreasonable delay. To effectuate this right, the court, in determining whether to grant any continuance, should make every reasonable effort to consider whether granting such continuance shall be prejudicial to the victim.

HISTORY: Laws, 1998, ch. 577, § 10, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecuting attorney to notify victim, upon written request of victim, of all charges filed against defendant and any criminal proceedings, see § 99-43-9.

§ 99-43-21. Right to be present at criminal proceedings.

The victim has the right to be present throughout all criminal proceedings as defined in Section 99-43-3.

HISTORY: Laws, 1998, ch. 577, § 11, eff from and after January 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in this section. The reference to "Section 99-43-1" was changed to "Section 99-43-3." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Victim's right to be present at any proceeding at which negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court, see § 99-43-27.

JUDICIAL DECISIONS

1. Victim's right to be present.

Trial court did not abuse its discretion by allowing the prosecution to display the injured child to the jury because: (1) under Miss. Const. Art. 3, § 26A and Miss. Code Ann. § 99-43-21 (Rev. 2007), the victim had the right to be present and be heard during the criminal proceedings; (2) the State was required to offer proof of serious bodily injury in order to convict defendant of aggravated assault; and (3) the probative value of the jury's viewing the child's injuries was not substantially outweighed by unfair prejudice to defendant. Harris v. State, 979 So. 2d 721, 2008 Miss. App. LEXIS 197 (Miss. Ct. App. 2008).

§ 99-43-23. Separate waiting area; minimizing contact with defendant, defendant's relatives and defense witnesses.

The court shall provide a waiting area for the victim separate from the defendant, relatives of the defendant, and defense witnesses, if an area is available and the use of the area is practical. If a separate waiting area is not available, or its use impractical, the court shall minimize contact of the victim with the defendant, relatives of the defendant, and defense witnesses during court proceedings.

HISTORY: Laws, 1998, ch. 577, § 12, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Discretion of victim whether to exercise the right to be present at a court proceeding, see § 99-43-37.

§ 99-43-25. Victim residence and identification information; petition, hearing and confidentiality.

(1) Based upon the reasonable apprehension of the victim of acts or threats of physical violence or intimidation by the defendant, the family of the defendant, or by anyone at the direction of the defendant, against the victim or the immediate family of the victim, the prosecutor may petition the court to direct that the victim or any other witness not be compelled to testify during pre-trial proceedings or in any trial, facts that could divulge the identity, residence, or place of employment of the victim, or other related information, without consent of the victim unless necessary to the prosecution of the criminal proceeding. If the court schedules a hearing on the merits of the petition, it shall be held in camera.

(2) The address, phone number, place of employment, and other related information about the victim contained in the prosecuting attorney's file shall not be public record.

HISTORY: Laws, 1998, ch. 577, § 13, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1,

1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-27. Negotiated plea agreements; notice and presence.

The victim has the right to be present at any proceeding at which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court. The court shall not accept a plea agreement unless:

(a) The prosecuting attorney advises the court that, before requesting the negotiated plea, reasonable efforts were made to confer with the victim.

(b) Reasonable efforts were made to give the victim notice of the plea proceeding, including the offense to which the defendant will plead guilty, the date that the plea will be presented to the court, the terms of any sentence agreed to as part of the negotiated plea, and that the victim has the right to be present.

HISTORY: Laws, 1998, ch. 577, § 14, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Right to be present at criminal proceedings, see § 99-43-21.

Discretion of victim whether to exercise the right to be present at court proceedings, see § 99-43-37.

Statewide automated victim information and notification system generally, see §§ 99-45-1 et seq.

§ 99-43-29. Notice regarding disposition and sentencing.

The prosecuting attorney shall provide to the victim the date of a conviction, acquittal, or dismissal of the charges filed against the defendant and prior to sentencing, when applicable, notice of the following:

(a) The criminal offense for which the defendant was convicted, acquitted, or the effect of a dismissal of the charges filed against the defendant.

(b) If the defendant is convicted, on request, the victim shall be notified, if applicable, of the following:

(i) The existence and function of the pre-sentence report.

(ii) The name, address, and telephone number of the office which is preparing the pre-sentence report.

(iii) The right to make a victim impact statement.

(iv) The right of the defendant to view the pre-sentence report.

(v) The right to be present and be heard at any sentencing proceeding.

(vi) The time, place and date of the sentencing proceeding.

(vii) If the court orders restitution, the right to pursue collection of the restitution as provided by Section 99-37-1 et seq., Mississippi Code of 1972.

HISTORY: Laws, 1998, ch. 577, § 15, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecutor's duty to confer with victim prior to disposition, see § 99-43-11.

Victim impact statements during court proceedings, see § 99-43-33.

Statewide automated victim information and notification system generally, see §§ 99-45-1 et seq.

§ 99-43-31. Victim impact statements to probation officers; duty to consider victim impact.

The victim may submit a written impact statement or make an oral impact statement to the probation officer for use in preparing a pre-sentence report. The probation officer shall consider the economic, physical, and psychological impact that the criminal offense has had on the victim and the immediate family of the victim.

HISTORY: Laws, 1998, ch. 577, § 16, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Presentence reports generally, see § 47-7-9.

Presentence investigator to prepare and append to presentence evaluation report a written victim impact statement, see § 99-19-57.

§ 99-43-33. Victim impact statements during court proceedings.

The victim has the right to present an impact statement or information that concerns the criminal offense or the sentence during any entry of a plea of guilty, sentencing or restitution proceeding.

HISTORY: Laws, 1998, ch. 577, § 17, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

JUDICIAL DECISIONS

1. Record on appeal.

Although defendant argued that a circuit court denied defendant the right to make a record for appellate review, the issue was without merit because the trial judge did not say that defendant was not allowed to place a letter from defendant's family into the record, but simply said that the letter would have been more appropriate during an entry of a plea of guilty, a sentencing, or a restitution proceeding. Furthermore, defendant did not attempt to introduce the letter at the sentencing hearing. Lewis v. State, 170 So. 3d 1245, 2015 Miss. App. LEXIS 389 (Miss. Ct. App. 2015).

§ 99-43-35. Post-arrest release or escape and post-sentencing information.

The victim has the right to the following information:

(a) As soon as practicable after the date of sentencing, the office of the prosecuting attorney shall notify the victim of the sentence imposed on the defendant.

(b) The names, addresses and telephone numbers of the appropriate agencies and departments to whom request for notice should be provided.

(c) The status of any post-conviction court review or appellate proceeding or any decisions arising from those proceedings shall be furnished to the victim by the Office of the Attorney General or the office of the district attorney, whichever is appropriate, within five (5) business days after the status is known.

(d) Upon any post-arrest release of the defendant, the sheriff or municipal jailer shall, upon request, notify the victim of the release of the defendant. In the case of domestic violence or sexual assault, the appropriate law enforcement agency shall make a reasonable attempt to notify the victim of the defendant's post-arrest release, regardless of the victim's exercise of the right to receive this information.

(e) The agency having physical custody of a prisoner shall, if provided a request for notice, and as soon as practicable, give notice to the victim of the escape and, subsequently, the return of the prisoner into custody.

(f) Upon receiving notice from the Department of Mental Health of the release of a person who was civilly committed under Section 41-21-63 as a person with unresolved felony charges found incompetent to stand trial, the office of the prosecuting attorney must notify a victim or victim representative who has complied with Section 99-43-9.

HISTORY: Laws, 1998, ch. 577, § 18; Laws, 2007, ch. 587, § 9, eff from and after July 1, 2007; Laws, 2019, ch. 468, § 23, eff from and after July 1, 2019.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Amendment Notes — The 2019 amendment added (f).

Cross References — Prosecutor notice requirements upon written request of victim, see § 99-43-9.

Notice regarding disposition and sentencing, see § 99-43-29.

Notice provided to victim by custodial agency, see § 99-43-41.

Statewide automated victim information and notification system generally, see §§ 99-45-1 et seq.

§ 99-43-37. Presence at court proceedings; oral or written statements by victim.

It is the discretion of the victim to exercise the right to be present and heard, where authorized by law, at a court proceeding. The absence of the victim at the proceeding of the court does not preclude the court from going forward with the proceeding. The right of the victim to be heard may be exercised, where authorized by law, at the discretion of the victim, through an oral statement or submission of a written statement, or both.

HISTORY: Laws, 1998, ch. 577, § 19; Laws, 2004, ch. 355, § 2, eff from and after passage (approved Apr. 20, 2004).

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Right to be present at criminal proceedings, see § 99-43-21.

§ 99-43-39. Return and release of victims' property.

(1) Prior to the admission into evidence by the court, on request of the victim, after consultation and written approval by the prosecuting attorney, the law enforcement agency responsible for investigating the criminal offense shall return to the victim any property belonging to the victim that was taken during the course of the investigation, or shall inform the victim of the reasons why the property will not be returned. The law enforcement agency shall make reasonable efforts to return the property to the victim as soon as possible.

(2) If the property of the victim has been admitted as evidence during a trial or hearing, the court may, upon request of the prosecuting attorney, order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the attorney for the defendant or investigator may inspect and independently photograph the evidence before it is released.

HISTORY: Laws, 1998, ch. 577, § 20, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-41. Custodial agency notice requirements.

Any custodial agency having physical custody of the prisoner, if provided a request for notice, shall mail to the victim the following information:

(a) Within fifteen (15) days prior to the end of the sentence of the prisoner, notice of release upon expiration of sentence or notice of medical release.

(b) Within fifteen (15) days after the prisoner has died, notice of the death.

HISTORY: Laws, 1998, ch. 577, § 21, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

Cross References — Prosecutor notice requirements upon written request of victim, see § 99-43-9.

Notice regarding disposition and sentencing, see § 99-43-29.

Notice of post-arrest release or escape and post-sentencing information, see § 99-43-35.

Notice provided to victim by custodial agency, see § 99-43-41.

Statewide automated victim information and notification system generally, see §§ 99-45-1 et seq.

§ 99-43-43. Victim statement or recording for Department of Corrections records; notice regarding parole or pardon proceedings; notice regarding change in custodial status proceedings.

(1) Upon written request, the victim shall have the right to be notified that he or she may submit a written statement, or audio or video recording, which shall be entered into the prisoner's Department of Corrections records. The statement or recording shall be considered during any review for community status of the prisoner or prior to release of the prisoner.

(2) The victim shall have the right to be notified and allowed to submit a written or recorded statement when parole or pardon is considered.

(3) The victim shall have the right to be notified and allowed to submit a written or recorded statement when any change in custodial status is considered, whether such action be by executive order or judicial action.

HISTORY: Laws, 1998, ch. 577, § 22; Laws, 2007, ch. 587, § 10, eff from and after July 1, 2007.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-45. Testimony and preparation for criminal proceeding free from threat or fear of losing employment.

The victim shall respond to a subpoena to testify in a criminal proceeding or participate in the reasonable preparation of criminal proceeding without loss of employment, intimidation or threat or fear of the loss of employment.

HISTORY: Laws, 1998, ch. 577, § 23, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-47. Prosecutor assertion of victims' rights.

The prosecuting attorney may assert any right to which the victim is entitled.

HISTORY: Laws, 1998, ch. 577, § 24, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-49. Failure to provide victim's right; effect; reasonable attempts to provide notice.

The failure to provide a right, privilege or notice to a victim under this chapter shall not be grounds for the defendant to seek to have the conviction or sentence set aside, and any reasonable attempt to provide notice shall satisfy the requirements of this chapter.

HISTORY: Laws, 1998, ch. 577, § 25, eff from and after January 1, 1999.

Editor's Notes — Laws of 1998, ch. 577, § 26, provides:

"SECTION 26. This act shall take effect and be in force from and after January 1, 1999, provided that the amendment to the Mississippi Constitution of 1890 proposed by Senate Concurrent Resolution No. 513, 1998 Regular Session, has been ratified by the people."

Senate Concurrent Resolution No. 513 of the 1998 Regular Session became Laws of 1998, ch. 691, and proposed the enactment of Section 26A, relating to crime victims' rights, into the Mississippi Constitution of 1890.

Section 26A of Article 14 of the Mississippi Constitution of 1890, as proposed by Laws of 1998, ch. 691 (Senate Concurrent Resolution No. 513), was ratified by the electorate on November 3, 1998, and was inserted as part of the Constitution by proclamation of the Secretary of State on November 30, 1998.

§ 99-43-101. Rights of children testifying in criminal proceedings.

(1) The following terms have the meanings ascribed:

(a) "Child" means any individual under the age of eighteen (18) years of age who must testify in any legal or criminal proceeding.

(b) "Proceeding," "criminal proceeding" or "legal proceeding" means:

(i) Any criminal hearing, criminal trial or other criminal proceeding in the circuit or county court in which a child testifies as a victim of a crime or as a witness as to a material issue; or

(ii) A youth court proceeding in which a child testifies as a victim of a crime or delinquent act or as a witness to a crime or delinquent act.

(2) In any proceeding in which a child testifies, a child shall have the following rights to be enforced by the court on its own motion or upon motion or notice of an attorney in the proceeding:

(a) To be asked questions in a manner a child of that age can reasonably understand, including, but not limited to, a child-friendly oath.

(b) To be free of nuisance, vexatious or harassment tactics in the proceeding.

(c) To have present in the courtroom and in a position clearly visible in close proximity to the child, a support person, if the support person is not a witness in the proceeding.

(d) To have the courtroom or the hearing room adjusted to ensure the comfort and protection of the child.

(e) To have the relaxation of the formalities of the proceedings in an effort to ensure the comfort of the child.

(f) To permit a properly trained facility animal or comfort item or both to be present inside the courtroom or hearing room.

(g) To permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child but would obscure the child's view of the defendant or the public or both.

(h) To have a secure and child-friendly waiting area provided for the child during court proceedings and to have a support person stay with the child while waiting.

(i) To have an advocate or support person inform the court about the child's ability to understand the nature of the proceedings, special accommodations that may be needed for the child's testimony, and any other testimony relevant to any of the rights set forth in this section.

(3) In circumstances where a defendant in a proceeding has chosen to proceed without counsel, the court may appoint standby counsel for that party and may order standby counsel to question a child on behalf of the pro se party if the court finds that there is a substantial likelihood that emotional harm would come to the child if the pro se party were allowed to question the child directly.

(4)(a) If the child is the victim of a crime, the court shall ensure that all steps necessary to secure the physical safety of the child, both in the courtroom and during periods of time that the child may spend waiting for court, have been taken.

(b) The court and all attorneys involved in a proceeding involving a child shall not disclose to any third party any discovery, including, but not limited to, the personal information of the child including the child's name, address and date of birth, any and all interviews of the child, and any other identifying information of a child. Upon written motion by a party, the court may authorize by written order the production of any discovery to a third party, if the third party agrees to maintain the security and nondisclosure of the discovery and return the discovery to the party upon conclusion of the case. The court shall enforce any violations of this section through its contempt powers.

(c) In any proceeding in which a child is alleged to have been emotionally, sexually, or physically abused, the child shall be given notice of all pretrial discovery motions, and the notice must be given in sufficient time to allow the guardian ad litem or counsel for the child to file any pleadings deemed appropriate to that situation.

(5)(a) In a proceeding involving an alleged offense against a child, the prosecuting attorney, the child's attorney, the child's parent or legal guardian, or the guardian ad litem may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape and by stenographic means.

(b) The court shall make a preliminary finding as to whether, at the time of trial, the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, or public for any of the following reasons:

(i) The child will be unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(iii) The child suffers a mental or other infirmity or medical condition which could potentially prevent the child from being present to testify at the trial.

(iv) Conduct of the defendant or defense counsel may cause or already has caused the child to be unable to testify or continue to testify out of fear or emotional distress.

(c) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in paragraph (b) of this subsection (5), the court shall order that the child's deposition be taken and preserved by videotape and stenographic means.

(d) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are:

(i) The prosecuting attorney or attorneys;

(ii) The attorney or attorneys for the defendant;

(iii) The child's attorney or attorneys and guardian ad litem;

(iv) Persons necessary to operate the videotape equipment; and

(v) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(e)(i) If the court finds the child is unable to testify in open court, based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that two-way closed-circuit television equipment be used as provided in Section 13-1-405.

(ii) The complete record of the examination of the child, including the image and voices of all persons who in any way participated in the examination, shall be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(f) If, at the time of trial, the court finds that the child is unable to testify for a reason described in subsection (5)(b), the court may admit into evidence the child's videotaped deposition in lieu of the child's testimony at trial. The court's ruling must be supported by findings on the record.

(g) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(h) In connection with the taking of a videotaped deposition, the court may enter a protective order for the purpose of protecting the privacy or emotional well-being of the child or for any other purposes.

(i) The videotape of a deposition taken under this paragraph shall be destroyed five (5) years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal, including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

HISTORY: Laws, 2015, ch. 493, § 2, eff from and after July 1, 2015; brought forward without change, Laws, 2018, ch. 341, § 11, eff from and after July 1, 2018.

CHAPTER 45.

STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM

Sec.

99-45-1. System established to inform crime victims regarding status of criminal offenders.
99-45-3. Law enforcement obligation to notify crime victims satisfied through participation in SAVIN program.
99-45-5. Department of Corrections required to update offender information frequently; no cause of action created by failure of automated system to provide notice to victim.
99-45-7. Cooperation among law enforcement agencies.
99-45-9. Administration by Department of Corrections; Statewide Victims' Information and Notification System Fund created.

§ 99-45-1. System established to inform crime victims regarding status of criminal offenders.

The Department of Corrections shall establish a statewide automated victim information and notification (SAVIN) system that will do the following:

(a) Automatically notify a registered victim via their choice of telephone, letter, or email when any of the following events affect an offender housed in the Department of Corrections or any county jail in the state:

(i) Is transferred or assigned to another facility;

(ii) Is transferred to the custody of another agency outside the state;

(iii) Is given a different security classification;

(iv) Is released on temporary leave or otherwise;

(v) Is discharged;

(vi) Has escaped; or

(vii) Has been served with a protective order that was requested by the victim.

(b) Automatically notify a registered victim via their choice of telephone, letter, or email, when an offender has:

(i) An upcoming court event where the victim is entitled to be present;

(ii) An upcoming parole or pardon hearing;

(iii) A change in status of their parole or probation status including:

1. A change in their supervision status; or
2. A change in their address.

(c) Automatically notify a registered victim via their choice of telephone, letter, or email when a sex offender has:

(i) Updated his profile information with the state sex offender registry;

(ii) Become noncompliant with the state sex offender registry.

(d) Permit a crime victim to receive the most recent status report for an offender in the Department of Corrections, county jail, or sex offender registry by calling the SAVIN system on a toll free telephone number as well as by accessing the SAVIN system via a public web site.

(e) All victims calling the SAVIN program will be given the option to have live operator assistance to use the program on a 24 hour, 365 day per year basis.

(f) Permit a crime victim to register or update the victim's registration information for the SAVIN system by calling a toll free telephone number or accessing a public web site.

HISTORY: Laws, 2006, ch. 421, § 1, eff from and after July 1, 2006.

Cross References — Mississippi crime victims' bill of rights generally, see §§ 99-43-1 et seq.

§ 99-45-3. Law enforcement obligation to notify crime victims satisfied through participation in SAVIN program.

Participation in the SAVIN program and making offender and case data available on a timely basis to the SAVIN program will satisfy the Department of Corrections', sheriff's, and prosecuting attorney's obligation to notify the crime victim of an offender's custody status and the status of the offender's upcoming court events.

HISTORY: Laws, 2006, ch. 421, § 2, eff from and after July 1, 2006.

Cross References — Mississippi crime victims' bill of rights generally, see §§ 99-43-1 et seq.

§ 99-45-5. Department of Corrections required to update offender information frequently; no cause of action created by failure of automated system to provide notice to victim.

The Department of Corrections must ensure that the offender information contained within the automated victim notification system is updated frequently enough to timely notify a crime victim that an offender has been released, has been discharged, or has escaped. However, the failure of the automated victim notification system to provide notice to the victim does not establish a separate cause of action by the victim against the state, local officials, or against the Department of Corrections.

HISTORY: Laws, 2006, ch. 421, § 3, eff from and after July 1, 2006.

Cross References — Mississippi crime victims' bill of rights generally, see §§ 99-43-1 et seq.

§ 99-45-7. Cooperation among law enforcement agencies.

Law enforcement officers shall cooperate with the Department of Corrections in establishing and maintaining the automated victim notification system.

HISTORY: Laws, 2006, ch. 421, § 4, eff from and after July 1, 2006.

§ 99-45-9. Administration by Department of Corrections; Statewide Victims' Information and Notification System Fund created.

(1) The Department of Corrections shall administer the automated victim notification system. The cost of administering the system must be paid with appropriations made to the department and from federal grants and contracts.

(2) There is created in the State Treasury a special fund to be known as the Statewide Victims' Information and Notification System Fund. The purpose of the fund shall be to provide funding for the Statewide Victims' Information and Notification System. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Department of Corrections. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Statewide Victims' Information and Notification System;
(b) The interest accruing to the fund;
(c) Monies received under the provisions of Section 99-19-73;
(d) Monies received from the federal government;
(e) Donations; and
(f) Monies received from such other sources as may be provided by law.

HISTORY: Laws, 2006, ch. 421, § 5; Laws, 2007, ch. 578, § 2, eff from and after July 1, 2007.

CHAPTER 47.

VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT OR STALKING ADDRESS CONFIDENTIALITY PROGRAM

Sec.
99-47-1. Definitions; Address Confidentiality Program established; application contents; certification as program participant; penalties for knowingly providing false or incorrect information on application; cancellation of certification; use of substitute address by public bodies; prohibition against disclosure of records in program participant's file; exceptions; immunity from liability.

§ 99-47-1. Definitions; Address Confidentiality Program established; application contents; certification as program participant; penalties for knowingly providing false or incorrect information on application; cancellation of certification; use of substitute address by public bodies; prohibition against disclosure of records in program participant's file; exceptions; immunity from liability.

(1) **Definitions. —** As used in this section:

(a) "Confidential address" means any residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this section.

(b) "Program participant" means a person certified as a program participant under this section.

(c) "Domestic violence" means any of the following acts committed against a current or former spouse, a person living as a spouse or who formerly lived as a spouse or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person with whom the defendant has a biological or legally adopted child in common, or a person in a current or former dating relationship:

(i) A violation of a domestic violence protection order;

(ii) Simple or aggravated domestic violence as defined in Section 97-3-7(3) or 97-3-7(4); or

(iii) Threats of such acts.

(d) "Sexual assault" means an act as defined in Section 45-33-23(h) as a sex offense.

(e) "Stalking" means an act as defined in Section 97-3-107 or Section 97-45-15.

(f) "Substitute address" means an address designated and assigned by the Office of the Attorney General to a program participant as a substitute mailing address under the Address Confidentiality Program.

(g) "Victim" means an individual against whom domestic violence, sexual assault, or stalking has been committed.

(2)(a) **Address Confidentiality Program. —** An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General serve as the substitute address for the person, the minor or the incapacitated person. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Office of the Attorney General and if it contains:

(i) A sworn statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, or sexual assault, and that the applicant fears for his or her safety, or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(ii) A designation of the Office of the Attorney General as agent for purposes of services of process and for the purpose of receipt of mail;

(iii) The confidential address where the applicant can be contacted by the Office of the Attorney General, and the telephone number or numbers where the applicant can be contacted by the Office of the Attorney General;

(iv) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, stalking, or sexual assault;

(v) A statement of any existing or pending court order or court action involving the applicant that is related to divorce proceedings, child support, child custody, or child visitation; the court that issued each order or has jurisdiction over an action shall be noted;

(vi) The signature of the applicant and a representative of a domestic violence shelter or rape crisis center as designated under subsection (6) who assisted in the preparation of the application;

(vii) The date on which the applicant signed the application; and

(viii) Evidence that the applicant is a victim of domestic violence, sexual assault, or stalking. This evidence shall include at least one (1) of the following:

1. Law enforcement, court or other local, state or federal agency records or files;

2. Documentation from a domestic violence shelter or rape crisis center; or

3. Other form of evidence as determined by the Office of the Attorney General.

(b) Applications shall be filed with the Office of the Attorney General.

(c) Upon approval of an application, the Office of the Attorney General shall certify the applicant as a program participant. Upon certification, the Office of the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. Applicants shall be certified for four (4) years following the date of certification unless the certification is withdrawn, cancelled or invalidated before that date.

(d) A program applicant who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application or while a program participant, shall be guilty of a misdemeanor, punishable by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months.

(e) A fraudulent attempt to gain access to a program participant's confidential address shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(f) Knowingly entering the Address Confidentiality Program to evade civil liability or criminal prosecution shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(g) A program participant may terminate the certification by filing a notarized request for withdrawal from the program with the Office of the Attorney General.

(3)(a) **Certification cancellation. —** If the program participant obtains a name change, the person's program participation is terminated and the person may immediately reapply for certification under the new name.

(b) The Office of the Attorney General may cancel a program participant's certification if there is a change in the residential address or telephone number from the address or the telephone number listed for the program participant on the application unless the program participant provides the Office of the Attorney General with a minimum of seven (7) days' notice before the change of address occurs.

(c) The Office of the Attorney General may cancel certification of a program participant if mail forwarded by the Office of the Attorney General to the program participant's confidential address is returned as undeliverable or if service of process documents are returned to the Office of the Attorney General as unable to be served.

(d) The Office of the Attorney General shall cancel certification of a program participant who applies using false information.

(e) The Office of the Attorney General shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. That program participant shall have thirty (30) days from receipt of notification of cancellation to appeal the cancellation decisions under procedures adopted by the Office of the Attorney General.

(f) An individual who ceases to be a program participant is responsible for notifying persons, who use the substitute address designated by the Office of the Attorney General as the program participant's address, that the designated substitute address is no longer the individual's address.

(4)(a) **Agency use of designated address. —** Except as otherwise provided in this section, a program participant may request that public bodies use the address designated by the Office of the Attorney General as the participant's substitute address. The program participant, and not the Office of the Attorney General, domestic violence shelter, nor rape crisis center, is responsible for requesting that any public body use the address designated by the Office of the Attorney General as the substitute address of the program participant. If there is any criminal proceeding on behalf of the program participant, the program participant is also responsible for notifying any law enforcement agency and the district attorney's office of the person's participation in the program. There shall be no responsibility on the part of any district attorney's office or any law enforcement agency to request that a public body use the substitute address. Public bodies shall accept the address designated by the Office of the Attorney General as a program participant's substitute address, unless the Office of the Attorney General has determined that:

(i) The public body has a bona fide statutory or administrative requirement for the use of the confidential address of the program participant as defined in this section; and

(ii) The confidential address will be used only for those statutory and administrative purposes.

(b) A program participant may use the substitute address designated by the Office of the Attorney General as his or her work address.

(c) The Office of the Attorney General shall forward all first-class, certified or registered mail to the program participant at the confidential address provided by the program participant. The Office of the Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

(d) A program participant's name, confidential address, telephone number and any other identifying information within the possession of a public body, as defined by Section 25-61-3, shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983. The program participant's actual name, address and telephone number shall be confidential and no public body shall disclose the program participant's name, address, telephone number, or any other identifying information.

(5) **Disclosure of records prohibited; exceptions. —** A program participant's confidential address and telephone number and any other identifying information in the possession of the Office of the Attorney General shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983, and shall not be disclosed during discovery in any criminal prosecution. The Office of the Attorney General shall not make any records in a program participant's file available for inspection or copying other than the address designated by the Office of the Attorney General, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency for official use only, but not to be included in any reports made by the law enforcement agency or required to be produced in discovery in any criminal prosecution;

(b) If directed by a court order, to a person identified in the order; or

(c) To verify, if requested by a public body, the participation of a specific program participant, in which case the Office of the Attorney General may only confirm participation in the program and confirm information supplied by the requester.

(6) **Assistance for program applicants. —** The Office of the Attorney General shall refer potential participants to domestic violence shelters or rape crisis centers that provide shelter and counseling services to either victims of domestic violence, stalking, or sexual assault to assist persons applying to be program participants.

(7) **Address confidentiality funding. —** Expenses of administering the Address Confidentiality Program shall be paid from the Crime Victims' Compensation Fund.

(8) **Immunity. —** The Office of the Attorney General and/or its agents and/or employees are immune from civil and/or criminal liability for damages for conduct within the scope and arising out of the performance of the duties imposed under this section. Any district attorney and his agents and employees, any law enforcement agency and its agents and employees and any local or state agency and its agents and employees are immune from liability, whether civil or criminal, for damages for conduct within the scope and arising out of the program. Any employee or representative of a domestic violence shelter or rape crisis center who acts in good faith to assist a victim complete an application for participation in the Address Confidentiality Program shall be immune from civil and/or criminal liability. Any assistance rendered pursuant to this section, by the Office of the Attorney General, its agents or employees, shall in no way be construed as legal advice.

(9) **Adoption of rules. —** The Office of the Attorney General Victim Compensation Division is authorized to adopt rules and regulations as shall be necessary for carrying out the provisions of this section.

HISTORY: Laws, 2008, ch. 537, § 1, eff from and after July 1, 2009; Laws, 2012, ch. 480, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (1)(d). The reference to "Section 45-33-23(g)" was changed to "Section 45-33-23(h)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Mississippi Public Records Act of 1983, generally, see §§ 25-61-1 et seq.

CHAPTER 49.

PRESERVATION AND ACCESSIBILITY OF BIOLOGICAL EVIDENCE

Sec.
99-49-1. Legislative intent; definitions; preservation of evidence procedures; remedies for noncompliance.

§ 99-49-1. Legislative intent; definitions; preservation of evidence procedures; remedies for noncompliance.

(1) **Legislative intent.** The Legislature finds that:

(a) The value of properly preserved biological evidence has been enhanced by the discovery of modern DNA testing methods, which, coupled with a comprehensive system of DNA databases that store crime scene and offender profiles, allow law enforcement to improve its crime-solving potential;

(b) Tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloguing and organization of such evidence;

(c) Law enforcement agencies indicate that "cold" case investigations are hindered by an inability to access biological evidence that was collected in connection with criminal investigations;

(d) Innocent people mistakenly convicted of the serious crimes for which biological evidence is probative cannot prove their innocence if such evidence is not accessible for testing in appropriate circumstances;

(e) It is well established that the failure to update policies regarding the preservation of evidence squanders valuable law enforcement resources, manpower hours and storage space; and

(f) Simple but crucial enhancements to protocols for properly preserving biological evidence can solve old crimes, enhance public safety and settle claims of innocence.

(2) **Definitions.** For the purposes of this section:

(a) "Biological evidence" means the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This definition applies whether that material is catalogued separately, such as on a slide, swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, cigarettes or other items.

(b) "DNA" means deoxyribonucleic acid.

(c) "Custody" means persons currently incarcerated; civilly committed; on parole or probation; or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period.

(d) "Profile" means a unique identifier of an individual, derived from DNA.

(e) "State" refers to any governmental or public entity within Mississippi, including all private entities that perform such functions, and its officials or employees, including, but not limited to, law enforcement agencies, prosecutors' offices, courts, public hospitals, forensics laboratories, and any other entity or individual charged with the collection, storage or retrieval of biological evidence.

(3) **Preservation of evidence procedures.**

(a) The state shall preserve all biological evidence:

(i) That is secured in relation to an investigation or prosecution of a crime for the period of time that the crime remains unsolved; or

(ii) That is secured in relation to an investigation or prosecution of a crime for the period of time that the person convicted of that crime remains in custody.

(b) This section applies to evidence that:

(i) Was in the possession of the state during the investigation and prosecution of the case; and

(ii) At the time of conviction was likely to contain biological material.

(c) The state shall not destroy biological evidence should one or more additional co-defendants, convicted of the same crime, remain in custody, and shall preserve the evidence for the period of time in which all co-defendants remain in custody.

(d) The state shall retain evidence in the amount and manner sufficient to develop a DNA profile from the biological material contained in or included on the evidence.

(e) Upon written request by the defendant, the state shall prepare an inventory of biological evidence that has been preserved in connection with the defendant's criminal case.

(f) The state may destroy evidence that includes biological material before the expiration of the time period specified in paragraph (a) of this subsection if all of the following apply:

(i) No other provision of federal or state law requires the state to preserve the evidence.

(ii) The state sends certified delivery of notice of intent to destroy the evidence to:

1. All persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment related to evidence in question;
2. The attorney of record for each person in custody;
3. The Mississippi Office of Indigent Appeals;
4. The district attorney in the county of conviction; and
5. The Mississippi Attorney General.

(iii) No person who is notified under subparagraph (ii) of this paragraph (f) does either of the following within sixty (60) days after the date on which the person received the notice:

1. Files a motion for testing of evidence under Title 99, Chapter 39, Mississippi Code of 1972; or

2. Submits a written request for retention of evidence to the state entity which provided notice of its intent to destroy evidence under subparagraph (ii) of this paragraph (f).

(g) If, after providing notice under paragraph (f)(ii) of this subsection of its intent to destroy evidence, the state receives a written request for retention of the evidence, the state shall retain the evidence while the person remains in custody.

(h) The state shall not be required to preserve physical evidence that is of such a size, bulk or physical character as to render retention impracticable. When such retention is impracticable, the state shall remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing, before returning or disposing of the physical evidence.

(i) Should the state be called upon to produce biological evidence that could not be located and whose preservation was required under the provisions of this statute, the chief evidence custodian assigned to the entity charged with the preservation of the evidence shall provide an affidavit in which the custodian stipulates, under penalty of perjury, an accurate description of the efforts taken to locate that evidence and that the evidence could not be located.

(4) This section does not require the state to preserve the biological evidence that is obtained in performing the test required by Section 99-3-41 and is required to be destroyed under that section.

(5) Any evidence in a murder, manslaughter or felony sexual assault case in the possession of the state on July 1, 2009, whether biological or not, shall be preserved by the state consistent with the legislative intent expressed in subsection (1) and subject to compliance with subsection (3)(f).

(6) **Remedies for noncompliance. —** If the court finds that biological evidence was destroyed in violation of the provisions of this section, it may impose appropriate sanctions and order appropriate remedies.

HISTORY: Laws, 2009, ch. 339, § 1; Laws, 2015, ch. 307, § 2; Laws, 2015, ch. 452, § 20; Laws, 2016, ch. 371, § 2, eff from and after passage (approved Apr. 6, 2016).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in (3)(f)(iii) and (g) by substituting "paragraph (f)(ii)" for "paragraph (f)(2)." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Section 2 of Chapter 307, Laws of 2015, effective from and after July 1, 2015 (approved March 13, 2015), amended this section. Section 20 of Chapter 452, Laws of 2015, effective from and after July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 20 of Chapter 452, Laws of 2015, which contains language that specifically provides that it supersedes § 99-49-1 as amended by Chapter 307, Laws of 2015.

RESEARCH REFERENCES

Practice References.

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Wecht, Cyril H., Forensic Sciences (Matthew Bender).

JUDICIAL DECISIONS

ANALYSIS

1. Applicability.
2. Hypothetical evidence.

1. Applicability.

Circuit court correctly ruled that appellant was not entitled to post-conviction relief because the law regarding the preservation of DNA evidence was not enacted until after the evidence in appellant's case was destroyed pursuant to a court order. Mason v. State, 247 So. 3d 362, 2018 Miss. App. LEXIS 263 (Miss. Ct. App. 2018).

When defendant faced charges arising from defendant's operation of defendant's boat, and the boat was sold, Miss. Code Ann. § 99-49-1(4) did not entitle defendant to dismissal because the statute did not apply, as (1) the boat was never moved from a marina, and (2) the State was not notified the boat was being sold, since Miss. Code Ann. § 85-7-251 only required notice to the boat's registered owner. Hardy v. State, 137 So. 3d 289, 2014 Miss. LEXIS 227 (Miss. 2014).

2. Hypothetical evidence.

In a murder case, the State did not violate defendant's due process rights by destroying evidence in violation of Miss. Code Ann. § 99-49-1 because the very existence of fingerprint or DNA evidence on the murder weapon was nothing more than a hypothetical. Childs v. State, 133 So. 3d 348, 2013 Miss. LEXIS 302 (Miss. 2013).

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